

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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**Th14a**

aAppeal filed ..... 4/7/2000  
49th day ..... Waived  
Substantial issue originally found..... 4/15/2004  
Project originally approved ..... 4/15/2004  
Revised findings originally adopted ... 8/11/2004  
Writ of mandate issued ..... 1/19/2007  
Staff ..... J.Bishop  
Staff report prepared..... 12/20/2007  
Hearing date ..... 1/10/2008  
Hearing item number..... Th14a

## APPEAL STAFF REPORT

### SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

**Appeal number** ..... **A-3-SLO-00-040 (Schneider SFD)**

**Applicant**..... Dennis Schneider

**Appellants** ..... Commissioners Sara Wan and Christina Desser

**Local government** ..... San Luis Obispo County

**Local decision** ..... Approved with conditions

**Project location** ..... West side of Highway 1, on the marine terrace approximately one-half mile south of China Harbor and one mile north of Villa Creek Road, north of the community of Cayucos along the Harmony Coast of San Luis Obispo County (APN 046-082-008).

**Project description** ..... Construction of a 10,000 square foot single family residence with a detached indoor lounge/pool structure, a 2,500 square foot barn, a 1.25 mile access road, and related residential development (e.g., well, water tanks, septic system, etc.) on a 40.6 acre agricultural blufftop lot.

**File documents**..... San Luis Obispo County Certified Local Coastal Program (LCP); San Luis Obispo County Coastal Development Permit (CDP) D980279V/D980010P Administrative Record; Visual Analysis (Cannon Associates, October 2000 and May 2003), (Sheppard Mullin, August 2002); Geologic Hazards and Bluff Retreat Study (Cleath & Associates, June 1998); Potential for On-site Wastewater Disposal Report (Cleath & Associates, December 1999); Leachfield Performance Report (GeoSource Inc., January 2000); Percolation Feasibility Discussion (GeoSolutions Inc., 2000); Addendum to Roadway Feasibility Discussion (GeoSolutions Inc., October 1, 2000); Pipeline Placement Discussion (GeoSolutions Inc., October 4, 2000); Botanical Survey of Schneider Property (David J. Kiel, June 4, 1998, July 21, 1999, and May 9, 2000); Herpetological Survey of Stock Pond (Dr. Fred Andoli, March 2001).

**Staff recommendation**...**Substantial Issue Exists; Approval with Conditions**

**Staff note:** On April 15, 2004, the Coastal Commission approved a CDP for a single-family residence and associated improvements subject to special conditions, including a condition requiring the house to be reduced in size and to be located on a different portion of the site than that proposed by the applicant.



**California Coastal Commission**  
**January 2008 Meeting**

Staff: J. Bishop Approved by:  
Th14a-1-2008

The modifications were deemed necessary to meet LCP requirements, including those limiting impacts to agricultural land, preserving the scenic landscape of the Harmony Coast, requiring development to be subordinate to and to blend with the natural character of the area, minimizing landform alterations, and limiting the visibility of the development from both onshore and offshore viewing areas.

The applicant filed suit challenging the Commission's conditions of approval. The San Luis Obispo County Superior Court upheld the Commission's action in its entirety. The applicant appealed the Superior Court's decision and the Court of Appeal ruled that the Commission did not have the authority to protect views from the ocean to the shoreline (see Exhibit 6 for a copy of the court order and opinion). The Court remanded the matter to the Commission, with instructions that the Commission reevaluate the project without regard to the effects of the project on views from the ocean to the shoreline. The Court did not otherwise limit the Commission's discretion when reviewing the project on remand.

Upon reevaluation through the remand, Staff continues to recommend that the Commission approve a modified project that will limit impacts to agricultural land, better protect the rural open space character of the Harmony Coast, and avoid disruption to sensitive habitat areas. It should be noted that the location of the previously approved development envelope has been altered slightly to reflect new information recently provided by the applicant regarding geological hazards (see Exhibit 8). The revised development envelope positions development off of steep slopes and away from these alleged debris flows. In light of the Court of Appeal ruling, certain special conditions intended to protect views from offshore (e.g., requirements for landscape berming) have been eliminated. The special conditions otherwise include similar conditions as were originally applied by the Commission, with some minor technical modifications as well as some new requirements designed to address coastal resource issues identified during the remand re-review.

**Summary of staff recommendation:** The San Luis Obispo County approval that is the subject of this appeal is for a 10,000 square foot residential dwelling with a detached indoor lounge/pool structure, a 2,500 square foot accessory barn, a 1.25 mile long access road, and related residential development (e.g., well, water tanks, septic system, etc.) situated on a 40.6-acre parcel zoned for agriculture. The project is located between Highway One and the Pacific Ocean north of the community of Cayucos in an area known as the "Harmony Coast" in San Luis Obispo County. The residence and barn would be located on the marine terrace portion of the property on the seaward side of the coastal range present along this stretch of coastline, with setbacks of approximately 100 feet from the edge of the coastal bluff. The proposed 1.25-mile road would traverse three other parcels as it extends from Highway One over the coastal range to the marine terrace site. The road would generally follow the route of an existing dirt jeep trail, however a portion of it deviates from the jeep trail in high hazard and sensitive resource areas. The County approval includes a variance because the access road would require grading on slopes greater than 30 percent when such grading is not allowed by the LCP.

Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed, because as approved by the County the proposed project is inconsistent with provisions of the San Luis Obispo County certified LCP, including policies and



ordinances pertaining to agriculture, visual and scenic resources, environmentally sensitive habitat areas (ESHA), public services, hazards, grading, and coastal access as follows.

First, the proposed project raises concerns with respect to the protection of coastal agriculture. The development is located on land designated for agricultural uses, and, in conjunction with neighboring parcels, has long been used for cattle grazing. The locally approved project allows for the conversion of an excessive amount of the site's agricultural land to non-agricultural (residential) uses, thereby diminishing the agricultural productivity of the site and setting a precedent for non-agricultural development that may adversely affect the long-term viability of agriculture in the region. Thus, the project conflicts with applicable LCP policies regarding the protection of agricultural lands.

Second, the proposed residential development poses significant adverse impacts to the rural open space character of the Harmony coast. The large 10,000 square foot residence and accessory structures located on the marine terrace are not typical of existing farm houses in the area and are not subordinate to the natural character of the area. Portions of the proposed project are within the public viewshed of inland areas like the recently acquired State Parks' SeaWest Ranch located directly to the north of the project site. The proposed access road will be visible from Highway One as it climbs up and over the coastal ridge to the marine terrace on the other side. Development of the access road will also likely require improvements to the bridge crossing over Ellysley Creek, and unavoidably involves cutting and filling of the hillside, retaining walls and extensive revegetation, all of which can alter natural landforms causing adverse visual impacts on the rural hillsides and character of the area, including in the primary Highway One viewshed.

Third, the proposed access road bisects several vegetation communities. Construction of a bridge crossing over Ellysley Creek may impact areas of riparian vegetation and has the potential to disturb or cause the removal of sensitive plant and animal species. In addition, unmapped wetland, rocky intertidal areas, and coastal prairie habitat areas have also been identified on the property. Therefore, the project raises issue with respect to consistency with the LCP's ESHA protection policies.

Fourth, the proposed development is located outside the Cayucos Urban Services Line, making it reliant upon on-site water and wastewater treatment. Although data regarding the on-site well's pump down test has been submitted, evidence that adequate water supplies to serve the development remain in question. In addition, the County's Environmental Health Department has not approved the water well. Thus, it is not clear that adequate water exists on-site to serve the proposed development.

To address these issues, Staff recommends approval with conditions that will: minimize site disturbance to be more consistent with the rural open space character of the Harmony coast (i.e., limit development to a 5,000 square foot development envelope, eliminate the proposed barn from the project); cluster the development on the northwest portion of the marine terrace to minimize the length of the terrace driveway, reduce the amount of cut slopes on the hillside, and limit the amount of development visible from SeaWest Ranch (including through eliminating the barn); require road siting and design to be as consistent as possible with the rural agrarian aesthetic; require evidence from the County Environmental Health Department that adequate water and sewer service is available; place the remainder of the site



area (outside of the development envelope) under a permanent agricultural and resource conservation area; protect sensitive species and archaeological resources during construction; require road improvements and alignments that will least disrupt the surrounding habitats; and require evidence that all appropriate state and federal agencies have reviewed and approved the project to ensure that the project will not result in any wetland fill and that any impacts to water quality or sensitive species are appropriately addressed.

As conditioned by this permit, the project will be consistent with the San Luis Obispo County certified LCP. The project will also be consistent with the Coastal Act policies regarding public access and recreation. Therefore, Staff recommends **approval with conditions**.

## Staff Report Contents

1. Project History.....	5
A. San Luis Obispo County Action .....	5
B. Appeal Procedures .....	5
C. Summary of Appellants' Contentions .....	6
D. Previous Commission Action and Litigation .....	7
2. Staff Recommendation on Substantial Issue .....	8
3. Staff Recommendation on Coastal Development Permit .....	8
4. Conditions of Approval.....	9
A. Standard Conditions.....	9
B. Special Conditions .....	10
Recommended Findings and Declarations.....	21
5. Project Description.....	21
A. Project Location .....	21
B. Project Description .....	22
C. County Approval.....	22
6. Substantial Issue Determination .....	23
7. Coastal Development Permit Findings.....	24
1. Agriculture.....	24
a. Applicable LCP Policies and Ordinances .....	25
b. Consistency with Applicable LCP Policies.....	26
c. Conclusion .....	29
2. Visual Resources .....	30
a. Applicable Policies.....	30
b. Consistency with Applicable LCP Policies.....	33
c. Conclusion .....	38
3. Environmentally Sensitive and Other Habitat Areas .....	38
a. Applicable Policies.....	38
b. Consistency with Applicable LCP Policies.....	43
c. Conclusion .....	45



4. Public Works .....	46
a. Applicable Policies.....	46
b. Consistency with Applicable LCP Policies.....	46
c. Public Works Conclusion.....	47
5. Hazards .....	48
a. Applicable Policies.....	48
b. Consistency with Applicable LCP Policies .....	48
c. Conclusion .....	50
6. Public Access and Recreation .....	50
a. Applicable Policies .....	50
b. Consistency with Applicable Policies.....	51
8. California Environmental Quality Act (CEQA) .....	52
9. Exhibits	
Exhibit 1: Project Vicinity and Location Maps	
Exhibit 2: Project Access Road Map, Site Plan, and Elevations	
Exhibit 3: San Luis Obispo County CDP Decision	
Exhibit 4: Coastal Commissioners Appeal	
Exhibit 5: Site Photos and Visual Simulations	
Exhibit 6: Appellate Court Order and Opinion	
Exhibit 7: Recent Correspondence	
Exhibit 8: Depiction of Modified Development Envelope	

**Click on the link at left  
to go to the exhibits.**

## 1. Project History

### A. San Luis Obispo County Action

On February 24, 2000, the San Luis Obispo County Planning Commission approved a CDP to construct a single-family residence with a detached indoor lounge/pool structure, detached barn, and an approximately 1.25-mile driveway. The County's CDP decision included a variance to authorize the construction of the driveway on slopes greater than 30 percent. See Exhibit 3 for materials related to the County's CDP decision on the project, including the County's findings and special conditions.

Notice of the Planning Commission's action on the CDP was received in the Commission's Central Coast District Office on March 24, 2000. The Commission's ten-working day appeal period for this action began on March 27, 2000 and concluded at 5:00 P.M. on April 7, 2000. One valid appeal (see below) was received during the appeal period. The appeal was filed April 7, 2000, and the applicant subsequently waived his right to a hearing within 49 days of that date.<sup>1</sup>

### B. Appeal Procedures

Coastal Act Section 30603 provides for appeal to the Coastal Commission of certain CDP decisions in

<sup>1</sup> As established by Public Resources Code Sections 30621 and 30625(a).



jurisdictions with certified LCPs. The following categories of local project decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; and (3) in a sensitive coastal resource area; or (b), for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project or energy facility is appealable to the Commission. This project is appealable because it is within a sensitive coastal resource area, it is located between the sea and the first public road paralleling the sea, and it is within 300 feet of the top of the coastal bluff. In addition, this project is also appealable because residential development is not the principal permitted use for the subject agriculturally zoned parcel.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the project following a de novo hearing in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

## C. Summary of Appellants' Contentions

**Please see Exhibit 4 for the full text of the appeal**

The appellants' contend that the County approved project is inconsistent with the policies and ordinances of the San Luis Obispo County LCP, as summarized below.

1. The County approved access road crosses several vegetation communities, affecting riparian vegetation and at least two sensitive plant species. It is possible that an alternative roadway configuration would avoid disruption of these environmentally sensitive habitats.



2. The location of prime agricultural soils on the site was not submitted with the project proposal, and the location of the barn is not shown on project plans; therefore, it is unknown whether or not the County approved structures are located on prime agricultural soils and whether development has been located in the area least suitable for agricultural production.
3. The proposed development is located outside the Cayucos Urban Services Line and evidence has not been provided to conclude that adequate water services currently exist on-site.
4. The proposed development is located within the Sensitive Resources Area combining designation. The siting and design of this 10,000 square foot house, driveway, and related structures pose significant adverse impacts to the rural open space character of this area, especially as viewed from the ocean. It is possible that an alternative roadway configuration and structural siting would avoid or reduce adverse impacts to visual and scenic resources in the area.
5. The access road will require cutting and filling of the hillside, retaining walls and extensive revegetation, and the proposed route traverses at least two areas subject to landslides. As such, alternative roadway routes and development sites should be considered that would not require such extensive landform alteration, alteration that would increase potential erosion and geologic instability of the hillsides.
6. The County approved project does not conform to LCP Coastal Zone Land Use Ordinance (CZLUO) Section 23.05.030(e) because the extent of the grading and associated site disturbance is excessive when compared to the use proposed (residential); has the potential to result in erosion and increase the potential for hazards to life or property (see number 5, above); and, will potentially have substantial adverse long-term visual effects (see number 4, above). The County approved road will have a width of 18 feet, which appears to be a larger roadway than what is required to accommodate this residential use.
7. The County approved variance allowing grading on slopes greater than 30% does not conform to CZLUO Section 23.01.045(d), which limits the approval of variances to situations where the variance does not constitute a grant of special privileges inconsistent with the land use category in which the property is situated. The variance is intended to allow for residential development, and is not necessary to allow for agricultural use of the property. There may be alternative locations for the proposed development that would minimize the need for grading on steep slopes.
8. The County required the applicant to make an offer to dedicate a lateral accessway of twenty-five feet of dry sandy beach along the shore, or from the mean high tide to the toe of the bluff where topography limits the dry sandy beach to less than twenty-five feet. However, the actual area available for public access may be limited. As such, the dedicated lateral access may be inadequate to compensate for the access impacts it is meant to offset, and alternative locations for the accessway may need to be considered.

#### D. Previous Commission Action and Litigation



On April 15, 2004, the Coastal Commission found that the County's approval raised a substantial issue and took jurisdiction over the CDP for the project. On that same day, the Commission held a de novo hearing and approved a CDP for a single-family residence and associated improvements subject to special conditions, including a condition requiring the house to be reduced in size and located on a different portion of the site than proposed by the applicant. The applicant filed suit challenging the Commission's conditions of approval (San Luis Obispo County Superior Court case number CV 040488). On June 30, 2005, the Superior Court decided on case number CV 040488 and upheld the Commission's action in its entirety. The applicant appealed the Superior Court decision to the State Court of Appeals, and on June 28, 2006 the Appellate Court ruled that the Commission did not have the authority to protect views from the ocean to the shoreline (see Exhibit 6 for a copy of the Appellate Court order and opinion number B186149). The Appellate Court did not, however, undo any other aspects of the Commission's decision in that respect. Rather, the Court decision was narrowly directed at the offshore view question, and the Court remanded the matter to the Commission with instructions that the Commission evaluate the project again, but without regard to the effects of the project on views from the ocean to the shoreline. This report presents the remand project analysis.

## 2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

**Motion.** I move that the Commission determine that Appeal Number A-3-SLO-00-040 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

**Staff Recommendation of Substantial Issue.** Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

**Resolution to Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-SLO-00-040 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

## 3. Staff Recommendation on Coastal Development Permit

Staff recommends that the Commission, after public hearing, **approve** a CDP A-3-SLO-00-040 subject





to the standard and special conditions below.

**Motion.** I move that the Commission approve Coastal Development Permit Number A-3-SLO-00-040 pursuant to the staff recommendation.

**Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve a Coastal Development Permit.** The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

## 4. Conditions of Approval

### A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.



## B. Special Conditions

1. **Scope of the Permit.** This permit authorizes, subject to the standard conditions above and these special conditions, the construction of a single-family residence with attached garage, detached indoor lounge/pool structure, water well, septic system, water tanks, underground utility connections, landscaping necessary to screen the development, and one driveway/access road. Construction of a barn, other accessory structures, or any other development not provided for by this permit, including that not provided for by the approved Revised Project Plans required by special condition 2 below, shall require an amendment to this permit. All other conditions required by San Luis Obispo County (attached as Exhibit 3) pursuant to an authority other than the Coastal Act continue to apply.
2. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of full-sized Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be substantially in conformance with the plans submitted to the Commission (depicted in Exhibits 2 and 8 of this report), but shall show the following changes and clarifications:
  - (a) **Residential Development Envelope.** All development other than the well, water tanks, septic system, and road construction shall be confined within a residential development envelope area of no greater than 5,000 square feet. The residential development envelope shall be sited as close to the property line on the northwest portion of the marine terrace as feasible, in the general location shown by Exhibit 8 of this report, and in no case shall the residential development envelope be located any closer than 100 feet to the blufftop edge.
  - (b) **Barn.** This permit does not authorize construction of the 2,500 square foot accessory barn. The barn shall be removed from the project plans. Any future improvements, including an agricultural accessory structure, such as a barn, shall require an amendment to this permit pursuant to 14 CCR Sections 13166 and 13250(b)(6). In addition, any agricultural accessory structure, such as a barn, shall be prohibited unless it is proposed as part of a bonafide agricultural operation.
  - (c) **Water tank, well, and septic system.** All wells, water tanks and associated apparatus, (pipes, pumps, etc.) shall be located underground, and shall be located as close to the residential development envelope as possible. If underground water tanks are not allowed or are found to be infeasible pursuant to standards of the California Department of Forestry, then water tanks can be located above ground. If any water tanks cannot be located underground for one of these California Department of Forestry reasons, then the Revised Project Plans shall be submitted with clear evidence to this effect, and all such tanks shall be camouflaged by design (e.g., colored to mimic the site's natural backdrop (i.e., dark greens and browns)) and landscaping, and shall not be visible from any public viewing points. Access road extensions and/or road improvements beyond the approved residential development envelope to the water well, water tank, or septic system sites is prohibited. Following septic system, water tank and well installation, all disturbed areas shall be contoured to mimic the natural topography of the site and



revegetated with native grasses of local stock appropriate to the Harmony Coast region of San Luis Obispo County.

- (d) **Road Construction.** All road construction shall be consistent with the approved Final Road Improvement Plans pursuant to special condition 7 below.
- (e) **Landscaping.** There shall be no ornamentally landscaped areas outside of the residential development envelope (see special condition 2(a) above). Only native and non-invasive plant species appropriate to the Harmony Coast region of San Luis Obispo County shall be allowed on the site, and all other plant species shall be prohibited. All areas disturbed by development surrounding the residential development envelope (for the well, water tanks, septic system, road, and related utilities and connections) shall be contoured to mimic the natural topography and revegetated with native grasses of local stock. The planting of invasive plant species, including any plant identified on the California Invasive Plant Council list, is prohibited. The Revised Project Plans shall be submitted with landscaping plans that identify all landscaping within the residential development envelope. Landscaping outside of the residential development envelope shall be pursuant to the approved Revegetation and Enhancement Plan pursuant to special condition 6 below.
- (f) **Underground Utilities.** All utilities shall be installed underground. Following utility installation, all disturbed areas shall be contoured to mimic the natural topography of the site and revegetated with native grasses of local stock appropriate to the Harmony Coast region of San Luis Obispo County.
- (g) **Building Materials.** Non-reflective, natural (e.g., unpainted wood, stone, etc.), and earth tone materials shall be used on all surfaces (including siding, roofing, windows, chimney, gutters, road surfacing, etc.). The project shall be designed to prevent the detection of glare, reflections, or lights from public viewing areas.
- (h) **Lighting.** There shall be no exterior night lighting around the residence, other than the minimum lighting necessary for pedestrian and vehicular safety purposes. All lighting shall be downward directed and designed so that it does not produce any light or glare off-site. All lighting fixtures shall be shielded so that neither the lamp nor the related reflectors are visible from public viewing areas. Floodlighting or spotlighting of ground or ocean water surfaces shall be prohibited.
- (i) **Fencing.** Fencing is not allowed along or on the road from Highway One to the Permittee's residential building envelope (see special condition 2(a) above). Fencing shall be limited to the perimeter of the residential building envelope. Gate and fence structures shall be visually consistent with the range fencing and gating that exist on adjacent grazing lands.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Revised Project Plans. Any proposed changes to the approved Revised Project Plans shall be



reported to the Executive Director. No changes to the approved Revised Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

**3. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of a full sized Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, provide for the following:

- (a) **Biological Monitor.** A qualified biological monitor approved by the Executive Director experienced with, at a minimum, wetland/riparian biology and native grasslands shall be present at the site during all ground disturbing activities. The biological monitor shall have the authority to halt all construction activities, and/or modify construction methods, as necessary to protect habitat and individual sensitive species. The biological monitor shall complete daily monitoring reports that indicate the date and time of work, weather conditions, the monitoring biologist's name, project activity/progress, and any listed and/or species of concern observed. These reports shall be compiled and submitted to the Executive Director upon completion of construction as part of a construction monitoring report.
- (b) **Archaeological Monitor.** This condition supplements San Luis Obispo County conditions 3 and 4 of local permits D980010P/D980279V, which are retained by this condition. A qualified archaeologist, approved by the Executive Director, shall be present to monitor all earth disturbing activities. The Permittee shall also include qualified local Native Americans as project monitors during all earth disturbing activities. If an area of cultural deposits is discovered during the course of the project, all grading or construction shall cease in the vicinity of the resource, and a plan that avoids such resources shall be submitted for the review and approval of the Executive Director.

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the archaeological monitor shall conduct a brief training session with construction personnel discussing the cultural sensitivity of the area and the protocol for discovery of cultural resources during construction. The archaeological monitor shall also inform all qualified local Native Americans of the timing of construction and their opportunity to participate in construction monitoring

- (c) **Construction Zone.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, construction fencing shall delineate the area subject to construction activities. The area shall be minimized to that absolutely necessary to construct the bridge, improvements to the access road, and residence. To the extent feasible, previously disturbed off-site areas shall be used for storage and staging of equipment and materials. Staging areas shall be identified on the construction plans.
- (d) **Cattle Grazing.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, a current list of the cattle owners/operators on all parcels affected by this project shall be created and notice shall be given to them that identifies precautionary steps to be taken should livestock animals be in the project vicinity. Moving animals away or fencing them out of construction sites shall be arranged. Written evidence of consultation and coordination with all interested parties shall be



submitted to the Executive Director for review and approval to prevent possible conflicts.

- (e) **Road/Bridge Construction Timing.** No construction of the bridge crossing and access road shall be allowed when Southwestern pond turtle, California red-legged frog, Tidewater goby, and/or California tiger salamander are expected to be present in the area of Ellysley Creek and its tributaries. At a minimum, all construction shall be limited to the dry season (i.e., from April 15<sup>th</sup> to October 15<sup>th</sup>) of the year. Immediately prior to the construction of the bridge/access road, the area within the construction zone shall be field surveyed for the presence of these sensitive species by a qualified biologist experienced with these species; any specimens found during the field survey shall be relocated to protected areas outside of the construction zone. If the field survey is conducted before July 1<sup>st</sup>, and bridge or access road construction will continue past July 1<sup>st</sup>, a second survey shall be required again to check for the presence, and relocate to safety any individuals found, of Southwestern pond turtle, California red-legged frog, Tidewater goby, and/or California tiger salamander by a qualified biologist experienced with these species.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

4. **Storm Water Pollution Prevention Plan.** PRIOR TO CONSTRUCTION, the Permittee shall submit, for Executive Director review and approval, two sets of a detailed and full sized Storm Water Pollution Prevention Plan that identifies specific construction practices and controls that will be implemented in order to minimize polluted runoff and erosion during and after construction. The Plan shall clearly identify all best management practices to be implemented during construction and their location. The Plan shall contain provisions for specifically identifying and protecting all natural drainage swales (e.g., with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the onsite wetland/riparian system and/or ultimately into the Pacific Ocean. Silt fences, or equivalent apparatus, shall be installed at the perimeter of all construction areas. At a minimum, the Plan shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during the rainy weather.

The Plan shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage; (c) concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas; (d) good construction housekeeping



shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Storm Water Pollution Prevention Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the approved Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

**5. Drainage and Erosion Control Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit, for Executive Director review and approval, two sets of a detailed and full sized Drainage and Erosion Control Plan. The Plan shall clearly identify all measures to be taken to collect and direct drainage from the access road, the residential development envelop, and the water tank, well, and septic system area to prevent geologic instability, erosion, sedimentation, and/or the degradation of coastal water quality in perpetuity. Drainage shall not be directed into sensitive habitat areas. The Plan shall, at a minimum, provide for the following:

- (a) The drainage system shall be designed to filter and treat (i.e. a physical and/or chemical reduction of pollutants achieved through filtration and treatment) the volume of runoff produced from irrigation and from each and every storm and/or precipitation event up to and including the 85<sup>th</sup> percentile 24-hour runoff event for volume-based BMPs and/or the 85<sup>th</sup> percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to its use for on-site infiltration, landscape irrigation and/or discharge. The drainage system and its individual components (such as drop inlets, retention basins, filtration mechanisms, etc.) shall be sized and designed according to the California Storm Water Best Management Practice Handbook.
- (b) All drainage system elements shall be permanently operated and maintained for the life of the project. It is the Permittee's responsibility to maintain the drainage system in a structurally sound manner and in its approved state according to the specifications of the manufacturer.
- (c) The drainage plan shall clearly identify all permanent measures to be taken to appropriately collect and direct stormwater drainage. Drainage shall not contribute to bluff instability or erosion in any way. Drainage shall not be allowed to pond at the blufftop edge or sheet flow over the bluff. Drainage devices shall not be located on, over, or near the bluff edge/face.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Drainage and Erosion Control Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the approved Plan shall occur without a Commission



amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

**6. Revegetation and Enhancement Plan.** This condition supplements San Luis Obispo County conditions 5, 6, 7, and 8 of local permits D980010P/D980279V, which are retained by this condition. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Revegetation and Enhancement Plan (Plan) to the Executive Director for review and approval. The Plan shall be prepared under direction of a qualified landscape professional in conjunction with a qualified botanist and shall provide for all areas outside of the residential development envelope disturbed by grading and/or construction to be recontoured to mimic the natural topography and revegetated with native grasses and other native species consistent with the Harmony Coast and the subject site, including through required use of local stock. The Plan shall be consistent with the Final Road Improvement Plan required pursuant to special condition 7. The Plan shall include an analysis by a qualified expert that considers the specific condition of the specific area disturbed (including consideration of differing soil, exposure, temperature, moisture, and wind factors) in determining appropriate revegetation techniques and species. The Plan shall be submitted with evidence of review and approval (or evidence that none is necessary) from the appropriate official(s) from the United States Fish and Wildlife Service and the California Department of Fish and Game. The Plan shall at a minimum provide for the following:

- (a) Use of non-invasive native plant species from native on-site parent stock where possible;
- (b) A schedule for all planting activities;
- (c) Maintenance and irrigation schedule for the revegetated areas (if necessary);
- (d) Performance criteria;
- (e) Short term and long term erosion control planting measures;
- (f) Provisions for the revegetation of all abandoned access routes;
- (g) The planting of non-native or invasive plant species, including any plant identified on the California Invasive Plant Council list, is prohibited.

PRIOR TO CONSTRUCTION, the Applicant shall retain a qualified botanist to carry out botanical resource mitigation measures including:

- (h) Seed collection of Cambria morning glory (*Calystegia subacaulis* ssp. *episcopalis*) for dispersal in conjunction with the Revegetation and Enhancement Plan.
- (i) Collection and transplant to a suitable location of specimens of Blochman's dudleya (*Dudleya bochmaniae*) found within limits of construction disturbance.
- (j) Direct the placement of construction fencing around sensitive plant species areas of occurrence.



- (k) Monitoring of road construction in the area of rare plants. The monitor shall work with construction personnel to reduce/avoid impacts to rare plant populations.

PRIOR TO OCCUPANCY the applicant shall submit verification of implementation of the approved Revegetation and Enhancement Plan and mitigation measures described above.

Five years from the date of the receipt of the Certificate of Occupancy for the residence, the Permittee or successors in interest shall submit, for the review and approval of the Executive Director, a Revegetation and Enhancement Plan monitoring report, prepared by a qualified specialist, that certifies the revegetation is in conformance with the approved Plan along with photographic documentation of plant species and plant coverage.

If the Revegetation and Enhancement Plan monitoring report indicates that the revegetation is not in conformance with or has failed to meet the performance standards specified in the Plan approved pursuant to this permit, the Permittee, or successors in interest, shall submit a revised or supplemental Revegetation and Enhancement Plan for the review and approval of the Executive Director. The revised Plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved Plan.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake enhancement activities in accordance with the approved Revegetation and Enhancement Plan. It is the responsibility of the Permittee to implement all enhancement and restoration measures specified in the Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the approved Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

**7. Final Road Improvement Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit, for Executive Director review and approval, two sets of a full sized Final Road Improvement Plan, including site plans and cross sections, prepared by and/or in consultation with a geotechnical engineer, for the roadway and all associated drainage facilities. The Permittee shall provide copies of the recorded easements covering the final road alignment shown on the Plan from Highway One to the Permittee's property, and the Plan shall graphically depict that the road improvements can be accomplished within the access easements secured by the Permittee. The access road shall, to the greatest degree feasible, follow the existing jeep trail, follow existing topographical contours, minimize visibility in the public viewshed (including for drainage components), and minimize alterations of natural landforms (i.e. cut and fills). The key objective of the Plan shall be to ensure that the road blends into the natural Harmony Coast public viewshed to the greatest degree feasible. The Plan shall include the following requirements:

- (a) A formal wetland delineation using California Coastal Commission standards shall be conducted along the entire length of the access road alignment, within a minimum width of 100 feet on both sides of the proposed road. The spatial extent of wetlands, if any, shall be mapped on the Final





Road Improvement Plan, and all data supporting the wetland delineation (including any areas deemed upland) shall be provided. All road development shall be at least 100 feet away from any identified wetland areas.

- (b) The access road shall not exceed the minimum width and length necessary to achieve safe access, consistent with California Department of Forestry (CDF) requirements, from Highway One to the residential building envelope. This shall include limiting the road to a maximum width of 12 feet in all areas acceptable to CDF, among other ways by incorporating turnout(s) determined to be necessary by CDF. In no case shall the road be wider than 18 feet. The access road shall not be improved beyond the approved residential development envelope. All road surfaces shall be redrock, or other material that is visually compatible with the surrounding rangeland, unless the road grade is greater than 12% and CDF requires paving. All such paved areas shall be colored to be visually compatible with the surrounding rangeland and the non-paved road surface. Black colored paving material is prohibited.
- (c) All retaining walls visible from Highway One and other public viewing areas shall be limited as much as possible by siting the road to avoid areas where retaining walls would be necessary, and, where unavoidable, ensuring that all visible retaining walls are camouflaged to approximate the natural hillsides as much as possible (i.e., colored and textured to match the hillside, allowing natural wood materials to weather, screened/obscured from view with cascading vegetation, etc.).
- (d) Where visible in the public viewshed, the access road shall be hidden and camouflaged as appropriate so that it blends into the natural Harmony Coast public viewshed to the greatest degree feasible. This may be accomplished through minor berming (including in concert with necessary drainage components) and small scale landscaping (provided the landscaping itself does not approximate an unnatural and straight-line linear form in the viewshed), and other similar means.
- (e) Low scale plants shall be used where appropriate to screen and/or camouflage the access road from view as seen from Highway One, provided that such landscaping shall be used in such a way to avoid linear forms (e.g., straight line plantings), and to avoid continuous landscaping where the road can be hidden from view by topography as much as possible. No plant shrubs or tree cover shall be used in areas where the road corridor crosses open grassland slopes. Native drought and wind tolerant shrubs shall be used to revegetate disturbed areas where the road corridor passes through vegetation with a significant shrub component, as on the road down to the coastal terrace. Vegetative screenings for the access road shall reduce the visual impacts associated with the road by using native species appropriate to the area that will not extend above the ridge line when mature. Plantings shall be staggered and not placed in uniform rows or lines so that the screening appears natural. All necessary road area vegetation shall be maintained in good growing condition and shall be replaced as necessary to maintain conformance with the approved Plan.



- (f) Lighting is prohibited along the access road between Highway One and the residential development envelope.
- (g) The bridge to be installed along the existing road near Ellysley Creek and its tributary shall be constructed and operational before construction of the other road improvements and/or residence. Bridge installation shall minimize the amount of vegetation removal and landform alteration to the greatest degree feasible.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake enhancement activities in accordance with the approved Final Road Improvement Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the approved Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 8. Residential Landscape Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for executive director review and approval, two sets of a full sized Residential Landscape Plan for the residential development envelope. The Plan shall be prepared in consultation with a landscape professional familiar with California native species. The Plan shall include an analysis by a qualified expert that considers the specific condition the residential development envelope area (including consideration of soil, exposure, temperature, moisture, and wind factors) in determining appropriate landscaping techniques and species. The Plan shall also include, at a minimum, a map showing the type, size, and location of all plant materials that will be used, the irrigation system, topography, and all other landscape features; and a schedule for installation of plants. The Plan shall demonstrate that only drought tolerant, non-invasive native plant species shall be allowed within the development envelope; the planting of non-native or invasive plant species, including any plant identified on the California Invasive Plant Council list, is prohibited.

The Permittee shall undertake development in accordance with the approved Residential Landscape Plan. Any proposed changes to the approved Residential Landscape Plan shall be reported to the Executive Director. No changes to the approved Residential Landscape Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- 9. Agricultural Hold Harmless and Indemnity Agreement.** By acceptance of this permit, the Permittee acknowledges and agrees on behalf of itself and all successors and assigns: (a) that the site is adjacent to land utilized for agricultural purposes; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittee and all



successors and assigns and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural properties against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any issues that are related to the normal and necessary agricultural land use and its impact to users of the property.

**10. Agricultural and Resource Conservation Area.**

No development, as defined in Section 30106 of the Coastal Act shall occur in the Agricultural and Resource Conservation Area described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- (a) Agricultural production activities defined as “activities that are directly related to the cultivation of agricultural products for sale. Agricultural products are limited to food and fiber in their raw unprocessed state, and ornamental plant material;”
- (b) Repair and maintenance of the roadways authorized by this permit;
- (c) Restoration, protection, and enhancement of native habitat and/or sensitive resources (e.g., wetlands, streams, and coastal prairie);
- (d) Agricultural support facilities directly related to the cultivation of food, fiber, and ornamental plants being undertaken on the site (recognizing that all agricultural support facilities must be consistent with visual resource protection criteria);
- (e) Installation and maintenance of water supply and wastewater treatment facilities in accordance with Special Condition 2c; and
- (f) Public access improvements.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the Permittee shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, which shall include all portions of Assessor Parcel Number 046-082-008 outside of the approved residential development envelope, as described in special condition 2a and as generally described and shown on Exhibit 8.

**11. Public Works.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall provide written authorization, for the review and approval of the Executive Director, that adequate onsite water supply is available, that the site is capable of providing for adequate onsite wastewater disposal (through a septic system, treatment facility, or equivalent), and that the County Environmental Health Division has approved the adequacy of any onsite water wells and wastewater disposal systems for the residential development authorized by this permit.

**12. Helicopter and Aircraft Use.** Helicopter/aircraft use, including but not limited to landing or



parking of helicopters on the property, associated with any development authorized by CDP A-3-SLO-00-040 is prohibited, except for emergency purposes.

**13. Other Agency Approval.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant shall submit written evidence that the necessary approvals for bridge and roadway construction have been obtained from the following regulatory agencies, or that no such approvals are required: 1) U.S. Army Corps of Engineers; 2) U.S. Fish and Wildlife Service; 3) California Department of Forestry; 4) California Department of Fish and Game; and 5) Regional Water Quality Control Board.

Should any additional wetland areas and/or other waters of the U.S. be documented on the property through the U.S. Army Corps of Engineers review, or through the wetland delineations required by Special Condition 7a, confirmation that the access road does not encroach within 100 feet of any such wetlands and/or waters is required. Revised roadway plans that comply with this setback requirement or an amendment to this permit is required if substantial changes are needed. Significant roadway changes and/or an amendment to this permit must be submitted for Executive Director review and approval.

The Permittee shall inform the Executive Director of any changes to the project required by the any of the above-listed agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is necessary.

**15. No Future Bluff or Shoreline Protective Device.**

- (a) No bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit Number A-3-SLO-00-040 including, but not limited to, the residence, foundations, decks, patios, water and septic systems, utility lines, wells, walkways, roads, and driveways, in the event that such development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the Permittee hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or the San Luis Obispo County certified Local Coastal Program.
- (b) If any government agency orders that the structures authorized by this permit are not to be occupied due to any of the hazards identified above, the Permittee shall remove all development authorized by this permit, including the residence, foundations, decks, patios, walkways, water and septic systems, utility lines, wells, walkways, roads, driveways, landscaping, and drainage improvements. In the event that portions of the development fall to the beach before they are removed, the Permittee shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.



**16. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the Permittee’s entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## Recommended Findings and Declarations

The Commission finds and declares as follows:

### 5. Project Description

#### A. Project Location

The subject property is located in an area known as the “Harmony Coast” between Highway One and the Pacific Ocean, north of the community of Cayucos in San Luis Obispo County (see Exhibit 1). The parcel is located approximately one mile north of Villa Creek Road, which is accessed directly from Highway One. The topography of the site is “steplike,” comprised of a steeply sloping ridge extending down to a relatively flat marine terrace. The terrace is a few hundred feet wide and ends abruptly at a steep coastal bluff, ranging from 38 to 50 feet in height. The bluff drops sharply down to rocky shores and tidepools at the oceanfront below (see Exhibit 5 for site photos).

The project site is approximately 40.6 acres in size and is designated for Agriculture in the LCP. The site is part of the approximately 550-acre South Ranch and originally part of the larger Rancho San Geronimo. The properties that made up the South Ranch were given certificates of compliance by the County and auctioned in the early 1990s. Scattered structures, barns, and older ranch roads can be found in this area. A small wooden building exists on the coastal bluff at the southeast property corner and is associated with historic seaweed farming operations. The site is characterized as open rangeland and has been grazed by cattle. There is a stock pond located on the ridge above the marine terrace that has been used to provide water to cattle. There is indication that the site, particularly portions of the marine terrace, has at one time been plowed as cropland. Except for the commercial abalone farm located downcoast of the project site, adjacent properties and the marine terrace in this area remain largely



undeveloped.

## B. Project Description

The applicant proposes to construct a 10,000 square foot single-family dwelling with an attached garage, a detached indoor lounge/pool structure, and a 2,500 square foot barn on a 40.6-acre parcel. All structures would be set back a distance of 70 to 150 feet from the coastal blufftop edge. The proposed residence would be located about 150 feet from the eastern property line and roughly 100 feet from the bluff edge. The indoor lounge/pool structure is proposed adjacent to the residence at a distance roughly 70 feet from the bluff edge. The building envelope for the residence and indoor lounge/pool structure is about 200 feet by 300 feet (or about 1.4 acres). The proposed barn, water well, turn around, and water tanks occupy an additional area of about 100 feet by 150 feet (about 0.35 acres) located about 750 feet west of the residence. A paved driveway would connect the barn and residence areas.

According to the plans submitted by the applicant, little grading for the main residence would be required as it would be within a foot or two of existing grade. The pool would be excavated 3 to 4 feet below existing grade and built up to the level of the lounge. The house would be located approximately 80 feet seaward from the base of the scrub-covered ridge that ascends steeply to the north behind the house. The proposed barn would be located approximately 750 feet west (upcoast) of the residence on the terrace. The onsite wastewater disposal system has yet to be designed, but geotechnical reports recommend that it be located to the west of the buildings and not south between the structures and coastal blufftop.

The 1.25-mile access road to the site would disturb an approximately 179,000 square foot area as it extends from Highway One over the coastal ridge to the terrace below. The road is shown on site plans traversing three other parcels. The road generally follows the route of an existing unimproved jeep trail, however a portion of the road deviates from this existing access route. The precise location and improvements necessary to support the access road have not yet been completely determined because the road design must comply with County of San Luis Obispo Fire/California Department of Forestry (County/CDF) requirements that have yet to be determined. However, it is clear that the proposed road would generally be 18-feet wide under these requirements. CDF will allow the road to be narrowed to 10-12 feet in sensitive habitat areas providing there is clear view entering and exiting the roadway. If the narrowed roadway exceeds 400 feet, turnouts would be necessary to allow vehicles to pass. All other stretches of the road must be 18 feet wide with an all weather surface capable of supporting 20 tons. All road grades at or exceeding 12% must be paved under CDF requirements. See Exhibit 2 for proposed site plans, elevations, and access road alignment.

## C. County Approval

The County approved the proposed project with multiple conditions including:

- Submittal of archaeological and historic resource protection plans;
- Submittal of a Revegetation and Enhancement Plan which includes the use of native species from



native on-site parent stocks where possible;

- Review of erosion/hillside stabilization and drainage plans by a certified engineering geologist;
- Submittal of a Sediment and Erosion Control Plan to address temporary and long-term sedimentation and erosion control measures;
- Implementation of particulate (dust) control measures during construction;
- The use of dark earth tones for exterior house colors and avoidance of highly reflective materials to reduce glare and visibility from public view corridors;
- Undergrounding all utility connections serving the property;
- Limiting the amount of cut slopes to the minimum necessary; limiting the vertical height of all cut and fill slopes to 20 feet in vertical height above or below the existing ground surface (which may require retaining walls), and require cut slope borders to be rounded off to a minimum radius of 5 feet;
- Screening of the solid waste storage area at the Highway One access road intersection;
- Deed restrictions acknowledging possible impacts from adjacent agriculture;
- Recordation of an offer to dedicate public access along the shoreline;
- Submittal of access easements for the newly constructed roadway;
- Evidence of other State/Federal agency approvals.

See Exhibit 4 for the County’s CDP decision materials, including findings and conditions of approval.

## 6. Substantial Issue Determination

The appeal contentions fall generally into six areas: 1) agriculture; 2) visual and scenic resources; 3) environmentally sensitive habitat areas; 4) public works; 5) hazards; and 6) public access. As summarized below, these concerns raise a substantial issue with respect to the project’s conformance with the San Luis Obispo County LCP.

The County approved project allows for the conversion of an excessive amount of the site’s agricultural land to non-agricultural (residential) uses, thereby diminishing the agricultural productivity of the site and setting a precedent for non-agricultural development that may adversely affect the long-term viability of agriculture in the region. In addition, the proposed building sites and portions of the 1.25-mile long private road will cause adverse impacts to the scenic open space character of the Harmony Coast area. Improvements to the access road (portions of which are visible within the public viewshed of north and southbound travelers on Highway One) will require cutting and filling of the hillside, retaining walls, paving, and extensive revegetation, and the proposed route traverses at least two areas subject to landslides. Furthermore, the proposed driveway crosses several vegetation communities, affecting riparian vegetation and at least two sensitive plant species. In addition, the County approval



lacks evidence to conclude that adequate water service exists onsite.

With respect to visual impacts and the Appellate Court decision, the appeal contends that the project will degrade coastal views inconsistent with LCP requirements, particularly when viewed from offshore. Pursuant to the Court decision and remand, the appeal contention regarding views from the ocean does not raise a substantial issue. However, the visual resource issues raised by the appeal are not limited to the project's impact on views from the ocean. As noted by the appeal, the siting and design of the house and related structures poses significant adverse impacts to the rural open space character of the area. This includes impacts from the residence and roadway on coastal views from SeaWest Ranch, and roadway impacts on public views from Highway One, which raise a substantial issue regarding project conformance to LCP Visual Resource Policies 1, 2 and 4 that protect the visual quality of scenic vistas and views along the ocean, require new development to utilize slope-created pockets to shield development and minimize visual intrusion, and require new development to be sited to minimize its visibility from public view corridors. In addition, the grading and landform alteration associated with the proposed road, which could be reduced by relocating the residence to the north, raises a substantial issue regarding project conformance to CZLUO Section 23.07.164(e), which requires, among other things, that any proposed clearing of topsoil be the minimum necessary to achieve safe and convenient access, and that siting of proposed structures must not create significant adverse effects on the identified sensitive resource.

Because the County conditioned the project to include a lateral public access easement for the beach and intertidal areas of the site, no substantial issue exists with respect to this contention.

In conclusion, the proposed project would place a large residential development on agriculturally zoned property along the mostly undeveloped Harmony coastline. The County approved project raises critical and substantial issues with respect to the proposed project's conformance with the LCP's agriculture, visual and scenic resources, environmentally sensitive habitat areas, hazards and public service standards. The Commission finds that **a substantial issue** is raised with respect to the grounds on which the appeal has been filed and takes jurisdiction over the coastal development permit for this project. These issues are explained in more detail in the Coastal Development Permit findings of this staff report, which are incorporated herein by reference.

## 7. Coastal Development Permit Findings

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the CDP for the proposed project. The standard of review for this CDP determination is the San Luis Obispo County LCP and the public access and recreation policies of the Coastal Act.

### 1. Agriculture





a. Applicable LCP Policies and Ordinances

LCP agricultural land use policies specifically applicable to the subject site include:

***LCP Agriculture Policy 1:*** ...Other lands (non-prime) suitable for agriculture shall be maintained in or available for agricultural production unless: 1) continued or renewed agricultural use is not feasible; or 2) conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development; and 3) the permitted conversion will not adversely affect surrounding agricultural uses.

***LCP Agriculture Policy 3:*** In agriculturally designated areas, all non-agricultural development which is proposed to supplement the agricultural use permitted in areas designated as agriculture shall be compatible with preserving a maximum amount of agricultural use. When continued agricultural use is not feasible without some supplemental use, priority shall be given to commercial recreation and low intensity visitor-serving uses allowed in Policy 1.

*Non-agricultural development shall meet the following requirements:*

- a) No development is permitted on prime agricultural land....*
- b) Continued or renewed agricultural use is not feasible as determined through economic studies of existing and potential agricultural use without the proposed supplemental use.*
- c) The proposed use will allow for and support the continued use of the site as a productive agricultural unit and would preserve all prime agricultural lands.*
- d) The proposed use will result in no adverse effect upon the continuance or establishment of agricultural uses on the remainder of the site or nearby and surrounding properties.*
- e) Clearly defined buffer areas are provided between agricultural and non-agricultural uses.*
- f) Adequate water resources are available to maintain habitat values and serve both the proposed development and existing and proposed agricultural operations.*
- g) Permitted development shall provide water and sanitary facilities on-site and no extension of urban sewer and water services shall be permitted, other than reclaimed water for agricultural enhancement.*
- h) The development proposal does not require a land division and includes a means of securing the remainder of the parcel(s) in agricultural use through agricultural easements. As a condition of approval of non-agricultural development, the county shall require the applicant to assure that the remainder of the parcel(s) be retained in agricultural and, if appropriate, open space use...*

***LCP Agriculture Policy 4:*** A single-family residence and any accessory agricultural buildings necessary to agricultural use shall, where possible, be located on other than prime agricultural soils and shall incorporate whatever mitigation measures are necessary to reduce impacts on adjacent agricultural uses.



***CZLUO Section 23.04.050 – Non-Agricultural uses in the Agriculture Land Use Category:***

- a. Siting of Structures.*** *A single-family dwelling and any agricultural accessory buildings supporting the agricultural use shall, where feasible, be located on other than prime soils and shall incorporate mitigation measures necessary to reduce negative impacts on adjacent agricultural uses.*

**b. Consistency with Applicable LCP Policies**

As described earlier, the subject parcel was originally part of the larger Rancho San Geronimo that at one time was dedicated primarily to cattle grazing operations. The properties in this area were given certificates of compliance by the County and auctioned in the early 1990s creating the subject 40.6-acre parcel and its neighboring properties. Currently, much of the property in this area is not fenced and the site, in conjunction with neighboring parcels, is presently being used for cattle grazing operations.

The LCP is protective of agricultural lands by its encouragement of agricultural uses to the exclusion of other land uses that may conflict with them. San Luis Obispo County LCP Agriculture Policies 1, 3, and 4 prohibit development on prime agricultural land and allow development on non-prime agricultural land only if it can be demonstrated that structures are sited to reduce negative impacts on adjacent agricultural uses. Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.050(a) requires that single-family dwellings and accessory buildings reduce negative impacts on agricultural uses. Under the LCP, residential development is a conditional, discretionary use on the subject agriculturally (AG) zoned parcel. As such, the allowance of the proposed use is not a right under the LCP and is subject to discretionary review for consideration.

The LCP requires that lands suitable for continued or renewed agriculture be maintained in or available for agricultural production unless, among other reasons, the permitted conversion to a residential use will not adversely affect surrounding agricultural uses. Because the proposed project is a conditional, discretionary use, development such as this is subject to special criteria regarding the siting, design and character of structures and related development (like roads). Because the development is proposed in an area used for cattle grazing, adequate measures to ensure continued or renewed agriculture as well as the protection of surrounding agricultural activities must be put into place.

Potential conflicts between residential and agricultural land uses are highlighted by the fact that single-family residential development is a conditional, discretionary use at this site. Reasons for this conditional use designation are rooted in the inherent incompatibility of these two land uses. Typical incompatibility issues raised at residential-agricultural land use interface include: noise, dust, and odors from agricultural operations and animals; road-access conflicts between agriculturally related machinery and/or animals and private automobiles; limitations of pesticide application, and residential garden pest/exotic plant species transfer, to name a few. Such incompatibilities can threaten continued or renewed agricultural operations when its proximity to non-agricultural uses (such as residential uses) raises issues and/or concerns that standard agricultural practices (such as chemical spraying and fertilizing) or ongoing agricultural by-products (such as animal wastes, dust and noise from machine operations, cultivating, spraying, harvesting, etc.) are a threat to residential use and enjoyment of the



property.

LCP agriculture protection policies 1, 4, and CZLUO Section 23.04.050 call for non-agricultural development and agricultural accessory structures to be located outside of areas containing prime agricultural soils. The CZLUO lists four methods used to define “prime” soils. According to the Agricultural Commissioner’s Office, the method most applicable to this property is the land capability method. Under the land capability method, soils classified as I or II by the Soil Conservation Service are prime soil. In addition, the land must be used for irrigated crops or at least have available irrigation water to be classified as I or II. Letters from the Agricultural Commissioner’s Office note that the soils are not prime and that the land would not be suitable for irrigated crop production under the land capability method. Supporting this conclusion is the Storie Index (another method recognized in the LCP) for the soil type found onsite. Soils that are rated 80 or above, Grade 1, in the index are considered prime, as defined by the CZLUO. This soil type is rated 64 in the lower range of Grade 2. As such, the Commission can concur that the project generally satisfies portions of the LCP policies listed above, namely that no development is allowed on prime soils.

Another requirement under LCP Agriculture Policy 1 is to protect lands where continued or renewed agricultural use is feasible on the property. The property contains two types of agricultural land; the flat coastal terrace where the residence is proposed, and a sloping area that includes some steep hills (approximately 75% slope) rising from the marine terrace. The terrace area is more suited for crop production than the steep hills primarily due to slightly better soil quality, and slope related issues such as erosion and runoff. According to the Agricultural Commissioner, both areas are suited for cattle grazing. In this case, the Commission can concur that that the 40.6-acre parcel alone would not support a viable cattle-grazing operation. This is due to the fact that the parcel is sub-standard in size for a cattle operation, which in San Luis Obispo County requires a minimum of 320 acres under the LCP. However, if viewed in conjunction with other surrounding grazing lands, continued or renewed grazing operations remain feasible on most, if not all, of the property and should be maximized with any new development proposal. As described previously, the site has been managed as part of the larger South Ranch and the total South Ranch size of 550 acres is well above the LCP minimum parcel size threshold of 320 acres for grazing land.

The more fundamental question raised by the project is whether such a large residential development can be considered appropriate with respect to the agricultural use designation and characteristics of the property, particularly when the development is absent any bonafide agricultural operation. The proposed project, excluding the access road, is comprised of a large 10,000 square foot single-family residence that includes a detached indoor swimming pool/lounge structure, and a 2,500 square foot accessory structure (called out as a “barn” by the applicant). The development would occupy nearly one acre of the marine terrace portion of the parcel. According to materials submitted by the applicant, approximately 32,000 square feet would be developed by the project (12,000 gross square feet of structures would be developed with an additional 20,000 square feet of impervious surfacing). This is in addition to the nearly 179,000 square feet of road disturbance needed just to access the development, that is, over another four acres for just the road. Without a doubt, large “estate” developments such as this convert more agricultural land than necessary to accommodate a residential use, and have the ability to



undermine the purpose of the underlying Agriculture land use designation and the use of the land for LCP priority agricultural pursuits. Such a development would be considered a very large farm house if it were even one-third that size. Thus, a discretionary decision must be made as to the scale and character of such a use on agricultural land.

On a cumulative basis, these impacts would be exacerbated by similar projects that may take place in the foreseeable future in the Harmony Coast area. One concern is that these large, mostly undeveloped agricultural parcels, will be used in the future for more “estate” homes. These large estate type homes, where visible, would redefine the character of the agrarian and rural open space landscape here. More often than not, residential use of the land limits continued or renewed agricultural opportunities. This is particularly the case with lots such as this that, when considered together, can provide for large lot agricultural use as was historically the case here (for grazing) across properties unless they are converted to residential use.

It is very likely that the subject project would induce future non-agriculture related development in the immediately surrounding parcels. The project proposes a new improved road that would easily, and appears planned to, provide access to other residential development sites that would otherwise not be accessible. There are additional undeveloped properties that will be reached by the road here. Staff notes that the Sanders property (formerly Dallons, APN 046-082-007) has granted an access easement to the applicant for routing the proposed access road to the marine terrace on the adjacent upcoast property. Also, the owner of the downcoast property (Pierson/Williams) has for many years been contemplating residential development on the marine terrace. Further to the north, a project is pending at the County level that involves an approximately 4,500 square foot blufftop residence on lands zoned agriculture (Dalidio, D020179P). Both inland and visible from Highway One, a series of new lot line adjustments are proposed on historic grazing lands to support large residential “estate” developments (Henderson, pending Commission Appeal Number A-3-SLO-04-056) and (Martin/Hobbs, S020365L). It is possible that the Commission’s approval of a large dwelling unrelated to any agricultural use of the area here could induce similar future development proposals due the perception that such development would be deemed appropriate by the Commission.

To protect agricultural use of the site and surrounding areas consistent with the LCP, including in terms of cumulative impacts, the extent of agricultural land conversion must be reduced as much as possible, and the residential structures and related development must be sited and designed otherwise to support the continued use of the site as a productive agricultural unit. The primary mechanism for ensuring the required LCP protection is to minimize the footprint of the proposed development, including the length of the access road, and to eliminate the “barn”. As reflected in Special Condition 2, the size of the development envelope has been reduced to 5,000 square feet and relocated in the northwest portion of the marine terrace area, and the barn has been eliminated from the project. These modifications will bring the project closer to being in scale with typical residential structures associated with agricultural uses, and will allow for larger undeveloped and contiguous areas of the marine terrace to remain suitable for continued cattle grazing. In terms of the elimination of the barn specifically, this is a “barn” in name only. It is not proposed to function to support bonafide agricultural uses, and is better understood as a large secondary or accessory structure to the proposed residence. As such, it is not appropriate for this



agricultural property. These modifications site the development envelope as near to the access road as possible, and eliminate approximately 1,100 linear feet of roadway and large disturbance areas associated with the barn and residence, avoiding the conversion of roughly 1 acre of agricultural land on the marine terrace. To maintain the rural open-space character and allow for continued grazing of the area, fencing is limited to only the perimeter of the approved development envelope.

Additional measures are needed to preserve the maximum amount of agricultural use on the site. Policy 3 of the LCP provides guidance on how non-agricultural uses should be sited, designed, and restricted to protect agricultural resources. For example, part (h) of this policy requires that an agricultural and/or open space easement be granted to the County for all lands that are not a part of the non-agricultural development. Therefore, the applicant is required to put all remaining lands outside of the approved development into an Agricultural Use and Conservation Area (Special Condition 10). This condition specifically identifies the particular uses, including agricultural production activities like cattle grazing, which are allowed within the Agricultural Use and Conservation Area. Special Condition 2b prohibits the barn from being developed because it serves no agricultural purpose and converts agricultural land to other non-agricultural uses. Although the structure has been labeled as a barn, the proposed development does not include any agricultural use, and as a result, the barn cannot be considered an agricultural accessory structure. In the event that the applicant would like to pursue an agricultural accessory structure, such as a barn, in the future as part of a bonafide agricultural operation, an amendment to this permit would be necessary, and the potential impacts of such a proposal would be evaluated at that time.

Finally, although the County conditions state that “the applicant shall disclose to prospective buyers, the consequences of existing and potential intensive agricultural operations on adjacent parcels,” the County’s condition language remains unclear as to precisely how the disclosure is to be accomplished. The Commission’s experience has been that the precise wording of such an acknowledgment is critical to ensuring that future issues do not arise that would threaten ongoing normal agricultural operations on adjacent properties. It may be that the concept of the County’s condition is sufficient in this regard, but clarifying language will be necessary to ensure adequate noticing and recordation of these acknowledgements (Special Condition 9).

### c. Conclusion

The largely undeveloped Harmony Coast is a critical coastal resource area. Maintaining the agrarian and rural countryside between Cayucos and Cambria is of utmost County and State importance. One of the ways the LCP protects this resource is through the agricultural land use compatibility policies described above. In addition, new development must avoid conversion of coastal agricultural lands to residential uses, including by virtue of estatization of agricultural properties with expansive residential compounds not suited for, nor designed to accommodate, use of the site for agricultural production. In addition, the LCP requires decision makers to avoid decisions that may induce a similar type of future growth in such an important agrarian area, to the extent such decisions set precedence for an LCP policy interpretation that residential structures of any size and configuration are appropriate and allowed on rural agricultural land.



The special conditions imposed by this permit preserve the maximum amount of the site for agricultural use, as required by the LCP. Further, the revised project has been reduced in scale to more closely approximate the range of size and scale for Harmony Coast agricultural dwellings. The required “hold-harmless” language is included because the site is surrounded on three sides by agriculturally-zoned properties. With the inclusion of the Agricultural Use and Conservation Area (Special Condition 10), the project better preserves the agricultural viability of the site and adjacent agriculturally designated lands.

As such, and only as conditioned in this approval, the Commission can approve the modified project as consistent with the agricultural protection policies of the certified San Luis Obispo County LCP. The agricultural protection policies of the LCP require relocating the proposed residence independently of the visual and scenic resource protection policies analyzed in the following section of these findings.

## 2. Visual Resources

### a. Applicable Policies

The County’s LCP is protective of coastal zone visual resources, particularly views from public roads, and especially along the shoreline. The LCP states:

***Visual and Scenic Resource Policy 1:*** Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible.

***Visual and Scenic Resource Policy 2:*** Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Where possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created “pockets” to shield development and minimize visual intrusion.

***Visual and Scenic Resource Policy 4:*** New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views.

***Visual and Scenic Resource Policy 5:*** Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance.

***CZLUO Section 23.05.034 – Grading Standards***



*All excavation and fills, whether or not subject to the permit requirements of this title, shall be conducted in accordance with the provisions of Sections 7009 through 7013 of the Uniform Building code, and the following standards:*

- a. Area of cuts and fills: Cuts and fill shall be limited to the minimum amount necessary to provide stable embankments for required parking areas or street rights-of-way, structural foundations, and adequate residential yard area or outdoor storage or sales area incidental to a non-residential use.*
- b. Grading for siting of new development. Grading for the purpose of creating a site for a structure or other development shall be limited to slopes less than 20% except:*
  - (1) Existing lots in the Residential Single-Family category, if a residence cannot feasibly be sited on a slope less than 20%; and*
  - (2) When grading of an access road or driveway is necessary to provide access to building site with less than 20% slope, and where there is no less environmentally damaging alternative; and*
  - (3) Grading adjustment. Grading on slopes between 20% and 30% may occur by Minor Use Permit or Development Plan approval subject to the following:*
    - (i) The applicable review body has considered the specific characteristics of the site and surrounding area including: the proximity of nearby streams or wetlands, erosion potential, slope stability, amount of grading necessary, neighborhood drainage characteristics, and measures proposed by the applicant to reduce potential erosion and sedimentation.*
    - (ii) Grading and erosion control plans have been prepared by a registered civil engineer and accompany the request to allow the grading adjustment.*
    - (iii) It has been demonstrated that the proposed grading is sensitive to the natural landform of the site and surrounding area; and*
    - (iv) It has been found that there is no other feasible method of establishing an allowable use on the site without grading on slopes between 20% and 30%.*
- c. Grading adjacent to Environmentally Sensitive Habitats. Grading shall not occur within 100 feet of an Environmentally Sensitive Habitat as shown in the Land Use Element except:*
  - (1) Where a setback adjustment has been granted as set forth in Sections 23.07.172d(2) (Wetlands) or 23.07.174d(2) (Streams and Riparian Vegetation) of this title; or ...*
- d. Landform alterations within public view corridors. Grading, vegetation removal and other landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridors from collector or arterial roads. Where*



*feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.*

- e. Final contours: Contours, elevations and shapes of finished surfaces are to be blended with adjacent natural terrain to achieve a consistent grade and natural appearance. Border of cut slopes and fills are to be rounded off to a minimum radius of five feet to blend with the natural terrain...*
- g. Revegetation: Where natural vegetation has been removed through grading in areas not affected by the landscape requirements (Section 23.04.180 et seq.-Landscape, Screening and Fencing), and that are not to be occupied by structures, such areas are to be replanted as set forth in this subsection to prevent erosion after construction activities are completed.*
  - (1) Preparation for revegetation: Topsoil removed from the surface in preparation for grading and construction is to be stored on or near the site and protected from erosion while grading operation are underway, provided that such storage may not be located where it would cause suffocation of root systems of trees intended to be preserved. After completion of such grading, topsoil is to be restored to exposed cut and fill embankments or building pads to provide a suitable base for seeding and planting.*
  - (2) Methods of revegetation: Acceptable methods of revegetation include hydro-mulching, or the planting rye grass, barley or other seed with equivalent germination rates. Where lawn or turf grass is to be established, lawn grass seed or other appropriate landscape cover is to be sown at not less than four pounds to each 1,000 square feet of land area. Other revegetation methods offering equivalent protection may be approved by the Building Official. Plant materials shall be watered at intervals sufficient to assure survival and growth. Native plant materials are encouraged to reduce irrigation demands. Where riparian vegetation has been removed, riparian plant species shall be used for revegetation.*
  - (3) Timing of revegetation measures: Permanent revegetation or landscaping should begin on the construction site as soon as practical and shall begin no later than six months after achieving final grades and utility emplacements.*

The subject property is covered by the North Coast Shoreline SRA Combining Designation. The LCP describes the North Coast Shoreline SRA as follows:

**North Coast Shoreline (SRA)** – *The entire shoreline is a valuable natural resource which must be protected from excessive and unsightly development. Most of the coastline consists of low marine terraces with accessible beaches and coves interspersed with rocky shorelines and steep bluffs providing for a variety of passive recreation uses. Offshore are found rocks, reefs and kelp beds. The Ragged, Sierra Nevada, San Simeon and Piedras Blancas points and the coast between Ragged and San Simeon point and Reef are marine resources of particular importance.*





*North of San Carpoforo Creek, steep-sloped mountains rise abruptly from the ocean, limiting public use to the scenic views from Highway 1.*

**CZLUO Section 23.07.164(e): Required findings:** *Any land use permit application within a Sensitive Resource Area shall be approved only where the Review Authority can make the following required findings:*

- 1) The development will not create significant effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.*
- 2) Natural features and topography have been considered in the design and siting of all proposed physical improvements.*
- 3) Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures and will not create significant adverse effects on the identified sensitive resource.*
- 4) The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.*

**b. Consistency with Applicable LCP Policies**

San Luis Obispo County LCP Visual and Scenic Resources Policies 1, 2, 4, and standards for Sensitive Resource Areas (CZLUO Section 23.07.164(e)) require new development to be sited to protect unique and attractive features of the landscape, views to and along the ocean and scenic areas, and minimize its visibility from public view corridors. In addition, Visual and Scenic Resources Policy 5 and CZLUO Section 23.05.034 require grading, major vegetation removal and landform alterations within public view corridors to be minimized.

The entire parcel is within the LCP designated Ocean Shoreline Sensitive Resource Area (SRA) due to the visual and scenic qualities of the undeveloped coastal terraces and rural hillsides between Cayucos and Point Estero. The SRA designation encompasses many miles of coastline here, and is evidence that the shoreline as a whole in this area is a valuable natural resource which is protected from excessive and unsightly development by the LCP. The Harmony coastline is characterized by wind swept hills and wide coastal terraces dropping off dramatically to the rocky shores of the Pacific Ocean below. Because the surrounding Harmony Coast area is substantially undeveloped rural open space, any development in this area poses the potential for adverse impacts in terms of protecting the areas valuable scenic qualities; qualities of both state and regional importance.

There is no question that the current development proposal would significantly impact the scenic quality of the rural Harmony Coast. As shown in Exhibit 2, the proposed development would be located on the



flat undeveloped marine terrace typical of this of this stretch of coastline. The potential for similar proposals immediately to the north and south of the project site raises concerns about the cumulative impacts of development and its associated landscaping and landform alteration on the coastal terrace. The limited developments that can be seen in this general area (the existing Abalone Farm and the Alexander residence and accessory buildings to the southeast) demonstrate the kinds of significant visual impacts that can result from inappropriately designed development in this sensitive area, both in relation to the immediate development sites and also in relation to the coastline area as viewed as a coherent whole by the coastal visitor moving through this area. In fact, given the scenic nature of this stretch of coast as a whole, it is important that individual projects limit any development that would break up the expansive views of the grassy marine terraces and coastal hills and incrementally degrade the rural agrarian character of the Harmony Coast overall. Thus, under the LCP the greatest possible effort must be made to safeguard this area from the intrusion of inappropriate and unsightly development.

Policy 2 for Visual and Scenic Resources addresses site selection for new development. The policy serves to protect the unique qualities of scenic areas and prohibits the siting of development, where possible, in areas visible from public view corridors, including scenic views from Highway One and other inland areas. This is particularly important in the Harmony Coast designated SRA area, which is explicitly protected against visual intrusion by the LCP. The project would result in adverse impacts to the LCP-protected and unique visual and scenic resources of the Harmony Coast through development of a 1.25-mile access road, a 2,500 square foot barn, and 10,000 square foot residence, including detached accessory structures, on the undeveloped coastal terrace and hillsides of the Harmony Coast. These developments are visible, depending on the viewpoint, from public viewing areas. Portions of the access road are visible from Highway One and from other inland vantage points. The large residence and barn would be visible from inland vantage points upcoast from the project site, particularly the 746-acre SeaWest Ranch, a state park recently acquired specifically for its resource value, including as part of the aforementioned Harmony Coast (see Exhibit 5). Although SeaWest ranch currently only has limited public availability given it was conveyed to the State Parks system so recently, it is likely to be developed with public trails and overlooks and related public amenities in the future, and such visibility from this State Park will only be more prominent in the future.

With respect to the proposed residential structures (i.e., the house and barn and related development on the terrace), the introduction of such a large residence and extended compound of related development within the extremely scenic views of undeveloped coastal shoreline lands along the Pacific Ocean available from SeaWest Ranch, including with respect to future trails and public viewing locations adjacent to the site, would disrupt and degrade public views in a manner that is inconsistent with the LCP provisions cited above. Moreover, nighttime views (where one would expect light to be coming from the proposed residence) cannot be approximated by story poles or visual simulations viewed during the day. Such nighttime lights in the middle of an otherwise darkened wilderness area would also adversely impact public views from SeaWest Ranch ridgeline vantage points and potentially other



public lands.<sup>2</sup>

With respect to the proposed access road, the road would generally follow the route of an existing dirt jeep trail, except where a portion of it deviates from the jeep route in high hazard and sensitive resource areas. The County approval included a variance because the access road would require grading on slopes greater than 30 percent, when this is not allowed by the LCP. The existing dirt jeep trail in this area would be widened and paved, as CDF requires roads to be paved that have a slope greater than 12 percent. Travelers in both directions on Highway One would see the paved road as it ascends the inland side of the coastal range to the top of the ridgeline before dropping over to the terrace.

Road cuts and improved roads in rural agrarian settings such as this oftentimes result in one of the most significant adverse impacts from development to the rural aesthetic qualities of these types of agrarian public viewsheds, and it is no different in this case. In fact, the road's view impact in this case is magnified by the significance of the Harmony Coast public viewshed overall, and the fact that the view is as seen from Highway One, the only lateral shoreline road in this stretch of coast. Whereas the current view is typical of the Harmony Coast rural area, the road will not blend into this viewshed, and will appear as a non-natural and artificial incursion into it, serving to disrupt, degrade, and negatively detract from Highway One views. In addition, and as detailed above for the main compound, portions of the road, including where it would cross the terrace, would also be visible from the SeaWest Ranch State Park unit. In these SeaWest Ranch views, including future views as SeaWest Ranch is developed with public trails and overlooks, the road will also detract from the view, including where it extends across the terrace connecting components of the residential compound.<sup>3</sup>

Following concerns raised by the Commission with respect to the proposed project's viewshed impacts as described above, a series of visual resource studies were conducted to evaluate the project impacts of the residential structures (i.e., the residence, lounge/pool structure, and barn) on public view corridors.<sup>4</sup> A number of alternative building sites were evaluated on both the ridgetop and the marine terrace, and a variety of public viewpoints were evaluated. At all ridgetop locations evaluated, the residence and barn silhouetted against the skyline in clear view from major public viewing areas, particularly along Highway One. Based on the visual simulations, it was concluded that the marine terrace portion of the property was the least visible portion of the property for the residential structures. Thus, in terms of site selection at that scale, the Commission can concur that locating the residential structures on the marine terrace area is preferred. This conclusion when coupled with the infeasibility of gaining road access through the abalone farm means that an approved respect will result in the above-described visual

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<sup>2</sup> The proposed structures would also be visible from offshore for boaters, and would introduce incompatible structures into the offshore viewshed in a similar way. That said, the Appellate Court found that the Commission could not consider such offshore views in analyzing this project against this LCP, and they are not discussed further in these findings.

<sup>3</sup> On this point, numerous attempts have been made to secure a shared access route to the proposed residential area on the terrace using an existing road through the downcoast commercial abalone farm. It is clear that such a shared access would be the environmentally superior access alternative because it would eliminate the road from the Highway One viewshed, and would eliminate it on the terrace, including as seen from SeaWest Ranch. However, the downcoast landowner has apparently refused to grant permission for the applicant to use the existing abalone farm access road, and thus this preferred access option is not feasible in this case for the applicant (see Exhibit 7 for recent correspondence on this topic).

<sup>4</sup> Visual Analysis (Cannon Associates, October 2000 and May 2003; and Sheppard Mullin, August 2002).



impacts from the road development. These impacts can be limited as much as possible through minimizing landform alteration, road width, and paving, following existing topographical contours as much as possible, requiring compatible materials and colors for the road, landscape screening, a prohibition on lighting, and grassland revegetation and contouring for areas disturbed by road construction (see Special Condition 7), but they cannot be eliminated completely. Such impacts are difficult to mitigate with a project such as this, and particularly absent a defined program for the area to address such impacts more comprehensively, and they aren't mitigated here past what can be done to limit them.

With respect to terrace development, although the Commission concurs on the terrace as the best place to limit visual impacts from residential structures, the applicant's proposed location for development on the terrace cannot be found consistent with the LCP. As required by Policy 4 for Visual and Scenic Resources, "new development shall be sited to minimize its visibility from public view corridors" and the structures in that area "shall be designed to be subordinate to, and blend with, the rural character of the area." In addition, Policy 1 for Visual and Scenic Resources requires that the scenic rural landscape of the Harmony Coast be preserved and protected. Policy 4 also allows for the use of native vegetative screening to shield development so long as it does not obstruct major public views, but only after all efforts have been exhausted to site the development outside of public view corridors.

In this respect, the Commission recognizes the County's effort to minimize the development's impacts on the open landscape by: 1) requiring the use of earthtone colors on the exterior of new structures; 2) requiring revegetation of disturbed areas; 3) requiring some landscape screening; 4) requiring all utilities to be located underground; and 5) limiting the amount of cut slopes to the minimum amount necessary to construct the roadway. These are all appropriate components of any approval here (see Special Condition 2). However, these measures are not adequate to ensure that the extremely sensitive rural viewshed of the Harmony Coast will forever be preserved to the maximum extent feasible.

There is no question that Visual and Scenic Resource Policy 4 of the LCP sets a high standard for protection of the extreme sensitivity of the Harmony Coast. In fact, the controlling objective of Policy 4 is to design new structures as to be subordinate to and blend with the rural character of the landscape. There are at least two general themes to test for consistency in this case: 1) compatibility with the surrounding built environment, namely the immediately surrounding large agricultural parcels with farm buildings and individual residences; and 2) compatibility with the overall open space environs of the larger Harmony Coast area.

Consistency with the character of the built environment can be evaluated primarily on architectural style and overall mass/scale. In terms of architectural style, although it might be argued that the proposed modern residential style of the applicant's project is quite architecturally interesting, it could not be said to be similar to the existing character of development in the area. The proposed project has angular corners, large paned glass windows, an indoor swimming pool, spiral stairs leading to rooftop viewing areas, and pyramid like skylights that would be unlike any other farm buildings or residences in the immediate area. Architectural and design wise, it is clear that farmhouse architecture similar to existing Harmony Coast farmhouse structures would be more in keeping with the appropriate design aesthetic for this stretch of coast. Moreover, the proposed house would be substantially larger; at least twice or three



times the square footage of the largest neighboring home. As such, its large overall square footage, as viewed from public areas such as the ridgelines of SeaWest Ranch, raises an issue in terms of compatibility with the surrounding built environment. In fact, the proposed structure would be one of the largest residences on the entire San Luis Obispo County coastline.

In terms of compatibility with the larger rural agricultural Harmony Coast, such large residential development is distinctly counter to the character of this greater area. While a limited number of residences have been developed on the terrace well to the north of this area, this particular stretch of the Harmony Coast surrounding China Harbor and Point Estero is largely undeveloped. The primary exception to this is the existing commercial abalone farm downcoast of the proposed project that is partly visible from the Estero Bluffs and Highway One. As shown in the applicant's visual resource analysis, a mix of machinery, discharge pipes, growing pens, outbuildings, equipment and roads visually mar the marine terrace area to the detriment of the rural coastal aesthetic (see Exhibit 5). The presence of this unsightly development provides a reference point and touchstone for understanding how the construction of buildings along the Harmony blufftop can change the rural open space character of this stretch of coastline.

In order to find the project consistent with the LCP's visual and scenic resource protection policies, the project must be modified. Every reasonable effort must be made to ensure that new development in this area is truly subordinate to, and blends with the rural landscape. In light of the extreme visual sensitivity of the Harmony Coast, the Commission finds that the residence must be relocated and reduced in size and scale to meet the high standards of the LCP (see Special Condition 2).

Special Condition 2 will help address multiple issues at once. First and most importantly, relocating the development to the northern portion of the marine terrace, and limiting its footprint to a development envelope not to exceed 5,000 square feet will take advantage of natural contours to minimize the visibility of the residence and the proposed road improvements from SeaWest Ranch. Second, it will reduce the length of that portion of the improved access road/driveway on the terrace by around 1,100 feet (because the road will not need to extend to the south across the terrace), thereby minimizing road coverage and the amount of cut and fill on the terrace, consistent with CZLUO Policies 23.05.034 and 23.07.164(e). Third, it will reduce the amount of ground disturbance and landform alteration by at least 20,000 square feet. Fourth, it will reduce the scale and mass of the residential structure to that more nearly approximating an agricultural residence, even if its architectural design might not be similar to existing Harmony Coast farmhouses. Fifth, eliminating the accessory barn structure (which serves no agricultural function) from the project will help reduce the visual impacts of multiple structures in a linear residential compound loosely arranged along the marine terrace. Finally, Special Condition 2 requires that building materials be non-reflective and use only earth-toned colors, and that exterior lighting be limited to the minimum amount necessary for pedestrian and vehicular safety, in order to minimize the visibility of the development from public areas such as SeaWest Ranch, and to limit the visual degradation of that which is visible.

In terms of Highway One views of the residential structure, the required building envelope and the proposed one-story and maximum 22 foot tall residential structure (22 feet above average natural grade is the maximum height of any structure allowed under the local approval) will ensure that this structure



is not visible because it would be hidden from Highway One view by the intervening coastal range. That said, it is possible that future redevelopment and/or improvements might be considered that could become visible in the Highway One viewshed if they were taller than the structures approved in this case. It is not clear how much taller such improvements would have to be in that sense, but it is clear that protection of the Highway One view from incursion of such residential development is required by the LCP. Accordingly, future redevelopment and/or improvements would require an amendment to this permit and would be subject to the LCP standards protecting scenic coastal areas and views from Highway One.

### c. Conclusion

As proposed, the project does not meet the visual and scenic resource protection standards of the LCP because additional measures can be taken to preserve the scenic landscape of the Harmony Coast and make the development subordinate to, and blend with, the rural character of the area. The conditions of approval bring the proposed project into compliance with these LCP policies and recognize the need to protect the rural open space agrarian landscape of the Harmony Coast. The visual and scenic resource protection standards of the LCP require relocation of the proposed residence independently of the agriculture protection standards discussed in the previous section of these findings. In that sense, the identified conditions are necessary not only for public viewshed reasons, but also for agricultural protection reasons as they serve to reduce both identified impacts (see previous agricultural findings). As such, and only as conditioned in this approval, the Commission can approve the modified project as consistent with the visual protection policies of the certified San Luis Obispo County LCP as cited in this finding.

## 3. Environmentally Sensitive and Other Habitat Areas

### a. Applicable Policies

The LCP (CZLUO Section 23.11.030) defines “Environmentally Sensitive Habitat” as:

*A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. They include, wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations.*

If questions arise about the precise boundary location of any land use category or combining designation map boundary, the LCP contains procedures to resolve such questions (CZLUO Section 23.01.041c(3)).

***CZLUO Section 23.01.041 – Rules of Interpretation:*** Any questions about the interpretation or applicability of any provision of this title, are to be resolved as provided by this section.

*c. Map boundaries and symbols: If questions arise about the location of any land use category or combining designation boundary, or the location of a proposed public facility, road alignment*



*or other symbol or line on the official maps, the following procedures are to be used to resolve such questions in the event that planning area standards (Part II of the Land use Element), do not define precise boundary or symbol location:*

*(3) Where a boundary is indicated as approximately following a physical feature such as a stream, drainage channel, topographic contour line, power line, railroad right-of-way, street or alleyway, the boundary location shall be determined by the Planning Department, based upon the character and exact location of the particular feature used as a boundary.*

The LCP also contains the following provisions relevant to the protection of Environmentally Sensitive Habitats:

***Environmentally Sensitive Habitats Policy 1:*** *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.*

***Environmentally Sensitive Habitats Policy 2:*** *As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitat and that proposed development or activities will be consistent with the biological continuance of the habitat....*

***Environmentally Sensitive Habitats Policy 5:*** *Coastal Wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved, and where feasible, restored.*

***Environmentally Sensitive Habitats Policy 18:*** *Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.*

***Environmentally Sensitive Habitats Policy 27:*** *Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.*

***Environmentally Sensitive Habitats Policy 28:*** *Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed.*

***Environmentally Sensitive Habitats Policy 33:*** *Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.*

***Environmentally Sensitive Habitats Policy 36: Protection of Kelp Beds, Offshore Rocks, Rocky Points, Reefs and Intertidal Areas.*** *Uses shall be restricted to recreation, education and commercial fishing. Adjacent development shall be sited and designed to mitigate impacts that*



would be incompatible with the continuance of such habitat areas.

**CZLUO Section 23.07.170(d) – Development Standards for Environmentally Sensitive Habitats:**

- 1) New development within or adjacent to the habitat shall not significantly disrupt the resource.
- 2) New development within the habitat shall be limited to those uses that are dependent upon the resource.
- 3) Where feasible, damaged habitats shall be restored as a condition of development approval.
- 4) Development shall be consistent within the biological continuance of the habitat.
- 5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards).

**CZLUO Section 23.07.172** provides, in relevant part:

**23.07.172 – Wetlands.**

*Development proposed within or adjacent to (within 100 feet of the upland extent of) a wetland area shown on the Environmentally Sensitive Habitat Maps shall satisfy the requirements of this section to enable issuance of a land use or construction permit. These provisions are intended to maintain the natural ecological functioning and productivity of wetlands and estuaries and where feasible, to support restoration of degraded wetlands.*

- a. *Location of development: Development shall be located as far away from the wetland as feasible, provided that other habitat values on the site are not thereby more adversely affected. ...*
- d. *Wetland setbacks: New development shall be located a minimum of 100 feet from the upland extent of all wetlands, except as provided by subsection d(2). If the biological report required by Section 23.07.170 (Application Content) determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.*
  - (1) *Permitted uses with wetland setback: Within the required setback buffer, permitted uses are limited to . . . roads when it can be demonstrated that:*
    - (i) *Alternative routes are infeasible or more environmentally damaging.*
    - (ii) *Adverse environmental effects are mitigated to the maximum extent feasible.*

**CZLUO Section 23.07.174** provides, in relevant part:

**23.07.174 - Streams and Riparian Vegetation:** *Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and*





*protect the natural hydrological system and ecological functions of coastal streams.*

*a. Development adjacent to a coastal stream. Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat. ...*

*d. Riparian setbacks: New development shall be setback from the upland edge of riparian vegetation the maximum amount feasible. In the urban areas (inside the URL) this setback shall be a minimum of 50 feet. In the rural areas (outside the URL) this setback shall be a minimum of 100 feet. A larger setback will be preferable in both the urban and rural areas depending on parcel configuration, slope, vegetation types, habitat quality, water quality, and any other environmental consideration. These setback requirements do not apply to non-structural agricultural developments that incorporate adopted nest management practices in accordance with LUP Policy 26 for Environmentally Sensitive Habitats.*

*(1) Permitted uses within the setback: Permitted uses are limited to those specified in Section 23.07.172d(1) (for wetland setbacks), provided that the findings required by that section can be made. Additional permitted uses that are not required to satisfy those findings include pedestrian and equestrian trails, and non-structural agricultural uses.*

*All permitted development in or adjacent to streams, wetlands, and other aquatic habitats shall be designed and/or conditioned to prevent loss or disruption of the habitat, protect water quality, and maintain or enhance (when feasible) biological productivity. Design measures to be provided include, but are not limited to:*

*(i) Flood control and other necessary instream work should be implemented in a manner than minimizes disturbance of natural drainage courses and vegetation.*

*(ii) Drainage control methods should be incorporated into projects in a manner that prevents erosion, sedimentation, and the discharge of harmful substances into aquatic habitats during and after construction.*

*(2) Riparian habitat setback adjustment: The minimum riparian setback may be adjusted through Minor Use Permit approval, but in no case shall structures be allowed closer than 10 feet from a stream bank, and provided the following findings can first be made:*

*(i) Alternative locations and routes are infeasible or more environmentally damaging; and*

*(ii) Adverse environmental effects are mitigated to the maximum extent feasible; and*

*(iii) The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks; and*

*(iv) The adjustment is the minimum that would allow for the establishment of a principal*



*permitted use.*

*e. Alteration of riparian vegetation: Cutting or alteration of natural riparian vegetation that functions as a portion of, or protects, a riparian habitat shall not be permitted except:*

- (1) For streambed alterations allowed by subsections a and b above;*
- (2) Where an issue of public safety exists;*
- (3) Where expanding vegetation is encroaching on established agricultural uses;*
- (4) Minor public works projects, including but not limited to utility lines, pipelines, driveways and roads, where the Planning Director determines no feasible alternative exists;*
- (5) To increase agricultural acreage provided that such vegetation clearance will:*
  - (i) Not impair the functional capacity of the habitat;*
  - (ii) Not cause significant streambank erosion;*
  - (iii) Not have a detrimental effect on water quality or quantity;*
  - (iv) Be in accordance with applicable permits required by the Department of Fish and Game.*
- (6) To locate a principally permitted use on an existing lot of record where no feasible alternative exists and the findings of Section 23.07.174d(2) can be made.*

**CZLUO Section 23.07.176** provides:

**23.07.176 - Terrestrial Habitat Protection:** *The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.*

*a. Protection of vegetation. Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.*

*b. Terrestrial habitat development standards:*

- (1) Revegetation. Native plants shall be used where vegetation is removed.*
- (2) Area of disturbance. The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.*
- (3) Trails. Any pedestrian or equestrian trails through the habitat shall be shown on the site*



*plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.*

b. Consistency with Applicable LCP Policies

San Luis Obispo County LCP Environmentally Sensitive Habitats Policies 1, 2, 5, 18, 27, 36 and Coastal Zone Land Use Ordinance (CZLUO) Section 23.07.170(d) prohibit new development proposed within or adjacent to environmentally sensitive habitats from significantly disrupting the resource, and within an existing resource, allows only those uses dependent on such resources. In addition, Environmentally Sensitive Habitat Policy 28 requires native trees and plant cover to be protected whenever possible and Policy 33 requires that vegetation, which is rare or endangered, shall be protected against significant disruption of habitat value.

Four characteristics of the project site qualify certain areas of the site as a Sensitive Resource Areas and/or Environmentally Sensitive Habitats (or ESHAs). The first relates to the portion of the site fronting the Pacific Ocean, and the fact that marine mammals use this rocky intertidal zone as haul-out areas. In fact, the LCP specifically maps the shoreline area of the site as a Sensitive Resource Area (See Exhibit 1).

The second site area that qualifies portions of the site as ESHA, pursuant to ESHA Policy 5, is the presence of scattered wetlands. These ESHA areas include two wetlands identified in the botanical reports submitted for the project by the applicant. The first is a small stock pond located on the ridge overlooking the site of the proposed residence. The pond holds standing water for part of the year, but probably dries out in summer months. Small tufts of hydrophytic plants grow in damp soils around the perimeter of the pond. The second wetland area occurs along the road alignment in the vicinity of a hillside spring on the slope near the existing jeep trail where it makes its way to the coastal bluff. According to the botanical reports, this area includes grassland plant species associated with wetland plants such as spikebrush, toad rush, brow-headed rush, loosestrife, rabbitfoot grass, and docks. The botanist noted that these areas were disturbed by long-term intensive ranch activities. However, because formal wetland delineations have not been conducted for the entire parcel, it cannot be concluded that the submitted reports adequately depict all wetlands that may exist on the site.

The third sensitive habitat, pursuant to ESHA Policy 18, is Ellysley Creek, which parallels Highway One at the entrance of the proposed access road. The improved access road must cross the creek channel and the project description calls for a new bridge crossing at this location. Also, tributaries feed the creek at this location and may also be considered sensitive coastal streams under ESHA Policy 18. In addition to supporting riparian vegetation, the creek may also provide habitat for the California red-legged frog. A herpetological survey was conducted of the stock pond located at the top of the coastal range on the property and California red legged frog were found to be present. Although red-legged frog surveys haven't been performed in Elyssley Creek for this project, it is known habitat for the California red-legged frog. In addition, Southwestern pond turtle were seen crossing the road at Ellysley Creek by the applicant's consulting biologist. The creek may also provide habitat for the California tiger salamander and Tidewater goby, listed as endangered by the Federal Endangered Species Act.



The fourth important habitat value provided by the site is native grassland and plant cover, which is protected under ESHA Policy 33. According to the botanical studies, grasslands occupy the largest portion of the project area. These communities, in various forms, occur over large areas of the rolling hills and extend across the coastal terraces. At least two sensitive plant species protected under ESHA Policy 33, Cambria morning glory (*Calystegia subacaulis* ssp. *episcopalis*) and Blochman's Dudleya (*Dudleya blochmaniae* ssp. *blochmaniae*), were observed within the project site. These occurrences are mostly in areas along the proposed road alignment. Cambria morning glory was found to be growing on the ridge top overlooking the homesite in grassland near the small stock pond. Cambria morning glory is listed on California Native Plant Society (CNPS) List 1B (Plants Rare and Endangered in California and Elsewhere), but is not currently a candidate for either state or federal listing. Blochman's dudleya is also CNPS List 1B. The U.S. Fish and Wildlife Service listed Blochman's dudleya as a candidate species in Category 2 (C2), but it is not at present listed by the State of California.

To protect these resources, the project, as well as the local approval, incorporates specific measures intended to prevent negative impacts and allow for continued biological productivity. With respect to marine mammals, disturbance of the animals may be considered harassment and is illegal under the Marine Protection Act. Condition 1 of the local approval requires future residential development to be at a minimum 100 feet from the edge of the blufftop; this requirement is retained by Special Condition 2a. In addition, restrictions on the extent of lighting described above will prevent glare that may have an adverse impact on such haul-out areas.

In some areas along the coast, the Commission is aware of some private property owners proposing/using helicopters and aircraft as a means to access rural coastal residences (e.g. Gawthrop in San Luis Obispo County and Hinman in Santa Cruz County). This type of use is not only out of character with the rural coastline of Harmony, but can also disturb sensitive marine mammal haul-outs near the terrace. Special Condition 12 prohibits the use of helicopters/aircraft to access the development. Thus, conditions included in this approval will limit residential disturbances such as noise and light from impacting rocky intertidal haul-out areas.

With respect to the native grasses and sensitive plant species identified on the site, the applicant's consulting biologists recommend that seed collection and transplant of individual plant specimens occur prior to construction of the access road, and that revegetation and habitat enhancement be done for all areas disturbed by development. These measures, which were incorporated into the local conditions of approval, have been improved upon by the currently recommended conditions of approval (Special Condition 6). In addition, the permit conditions require biological monitoring during all construction activities, as necessary to avoid potential impacts to special status plant and animal species during construction (see Special Condition 3).

Regarding Ellysley Creek, the project may result in in-stream alterations or removal of riparian vegetation through the likely need to repair or replace the existing bridge, as identified during the County's review. In order to ensure that no negative impacts to the habitat values of the creek will occur, Special Condition 13 requires that the applicant provide evidence that the Department of Fish and Game and the U.S. Fish and Wildlife Service have reviewed and approved the roadway project, or that no such approvals are required.



Most of the new roadway appears to be setback at least 100 feet from the identified wetlands and stream and riparian habitat areas. However, as the improved road climbs the coastal ridge it follows a major tributary of Ellysley Creek that may contain wetlands and/or riparian habitat. Section 23.07.172a of the CZLUO requires that development be located as far away from wetlands as feasible, provided that other habitat values on the site are not thereby more adversely affected. Part d of the same ordinance requires that new development be located a minimum of 100 feet from the upland extent of all wetlands, except where a setback adjustment is necessary to accommodate a principal permitted use. Roads may be allowed within the required setback if it is demonstrated that alternative routes are infeasible or more environmentally damaging and that adverse environmental effects are mitigated to the maximum extent feasible. The same holds true under Section 23.07.174 for streams and riparian habitats in that development is allowed within riparian setback areas provided that alternative locations and routes are infeasible or more environmentally damaging.

The limited encroachment of the roadway within the documented sensitive habitat areas (e.g. wetlands, the riparian habitat area of Ellysley Creek) is approvable under the LCP because the required exception findings under 23.07.172(d)(1) and 23.07.174(d)(2) can be made. First, alternative routes further south or north would be more environmentally damaging because it would involve significantly more grading and disturbance. This would create more significant impacts to the sensitive habitats due to more vegetation removal, grading, landform alteration, and the possibility of streambed disturbances. Second, the primary adverse environmental effects of the proposed road construction and bridge repair are mitigated to the greatest extent feasible through Special Conditions 2, 3, 4, 5, 6, 7, and 8 which require biological monitoring during construction, implementation of a storm water pollution prevention plan, drainage and erosion control plans for the access road, revegetation and enhancement plan to protect sensitive plant species prepared under the direction of a qualified botanist, final road improvement plans that require the road to be the minimum width necessary to achieve access, and landscaping for all areas disturbed by the development. Thus, the project incorporates specific measures intended to prevent negative impacts and allow for continued biological productivity.

However, as previously noted, staff observations of the site indicate that there may be additional wetlands on the site that have not been delineated to date. Thus, Special Condition 7a requires that a formal wetland delineation be conducted using Coastal Commission standards along the proposed access road alignment. In addition, this concern is addressed by Special Condition 13, which requires the applicant to submit written evidence that the necessary approvals for roadway construction have been obtained from the U.S. Army Corps of Engineers (among other regulatory agencies). In the event that these further reviews document the presence of additional wetlands within 100 feet of the proposed road, revised roadway plans that comply with the 100 foot setback requirement must be submitted for Executive Director review and approval.

### c. Conclusion

As conditioned, the currently proposed residence and roadway project will not have an adverse impact on the sensitive habitat values provided by the site, and will protect the biological productivity of these areas, consistent with LCP policies cited above. In this case, there is no feasible, less environmentally



damaging alternative route for the access road or the location of the proposed residence. As such, and only as conditioned in this approval, the Commission can approve the modified project as consistent with the ESHA protection policies of the certified San Luis Obispo County LCP as cited in this finding.

#### 4. Public Works

##### a. Applicable Policies

***Public Works Policy 1:*** *New development shall demonstrate that adequate public or private service capacities are available to serve the proposed development...Permitted development outside the USL shall be allowed only if it can be serviced by adequate private on-site water and waste disposal systems...*

***CZLUO Section 23.04.430:*** *Development outside the urban service line shall be approved only if can be served by adequate on-site water and sewage disposal systems.*

##### b. Consistency with Applicable LCP Policies

San Luis Obispo County LCP Public Works Policy 1 and CZLUO Section 23.04.430 require new development to demonstrate that adequate public or private service capacities are available to serve the proposed development. The proposed development is located outside of the Cayucos Urban Services Line, which makes it reliant upon on-site water and wastewater treatment.

The County in its local approval did not make any specific findings or recommendations related to LCP Public Works Policy 1 or CZLUO Section 23.04.430 for the project. However, County staff indicates that evidence of adequate water supplies from domestic wells is a requirement for obtaining a building permit and therefore would be addressed during local building permit review.

This scenario is problematic because written approval for the onsite water well has not yet been provided by the County's Environmental Health Department (EHD), and EHD has expressed concerns with the adequacy of a water source for this site. Specifically, a pump test report (Filipponi & Thompson Pump Co., August 9, 1995) was provided to EHD for review and approval, and EHD responded with a letter (dated September 11, 1995) indicating the site's water source may not be adequate to serve the proposed development. The letter states:

*A review of the well driller's report as submitted by Filipponi & Thompson, drilling on your property located on Section 21, Township 28S, Range 9E, county of San Luis Obispo, has been made and we are pleased to advise you that the well is approved as to construction only. This is a low-production well and cannot be considered as adequate for domestic use in conjunction with issuance building permits for single-family residential structures per the requirements of Section 19,20,236 (b), Minimum Water Supply Single Family Dwellings, San Luis Obispo County Code. The adequacy of the well shall have to be demonstrated by a four hour or greater pump test due to the apparent low production shown on the drillers log. The well is located in an area of the County that has a history of low well production. [underlined emphasis added]*



Although some data regarding the on-site well's pump down test has been submitted, evidence that adequate water supplies to serve the development remain in question. The test report shows that the onsite water well produced 20 gallons per minute (GPM) at start, but dropped to 12 GPM only four hours later. This is a substantial flow reduction in a relatively short amount of time. While a rate of 5 GPM is generally considered adequate for single-family dwellings, this level must be sustained consistently over time. According to County Environmental Health, the four-hour pump test is the minimum test required. In areas that are known to have low well production, such as on the marine terrace along the Harmony coast, pump tests of 8-72 hours are needed. Longer duration pump tests will show whether or not adequate water flow can be sustained for a greater length of time. Furthermore, measurements of "draw down" and "recovery", which show how fast the water source is recharged, were not included in the test report. This information is critical to evaluating whether or not the well can produce continued water production over time. In order to make a finding that there are adequate water supplies to support the proposed development longer pump times and measured draw down and recovery rates must be performed and approved by the County Environmental Health Department. Although demonstration of adequate water supply is typically and appropriately a filing requirement for even considering a coastal development permit application, and is typically and appropriately a reason to deny a project for lack of demonstrated water supply in cases where such a filing requirement wasn't applied, given the unique circumstances in this case (a County approval, followed by an appeal and a Commission decision, followed by a court case and a remand for further Commission decision), the Commission in this case can find that this project can be approved provided adequate water supply is demonstrated (see Special Condition 11). Of course, if it is demonstrated that there is an inadequate water supply, then the permit could not be issued, and this would constitute a changed circumstance for Commission review were the applicant to ask for a CDP extension.

With respect to the septic system that would be used for onsite waste disposal, a number of studies have been conducted that indicate that the marine terrace location is adequate for effluent disposal. These reports have been evaluated by the Commission's geologist who concluded that from a purely geotechnical point of view, the coastal terrace would be best suited for the siting of a septic system. In this case, the County conditioned the project to submit leach field design and placement plans performed by a geotechnical engineer. This condition is retained in this permit approval.

#### c. Public Works Conclusion

San Luis Obispo County LCP Public Works Policy 1 and CZLUO Section 23.04.430 require new development to demonstrate that adequate public or private service capacities are available to serve the proposed development. The proposed development is located outside the Cambria Urban Services Line. In this case, evidence of County Environmental Health Department approval of the well has not been provided. Therefore, Special Condition 11 requires the applicant to submit evidence, prior to issuance of the coastal development permit, that the Environmental Health Department has approved the adequacy of the water well and any wastewater disposal system. As such, and only as conditioned in this approval, the Commission can approve the modified project as consistent with the applicable water supply and wastewater provision policies of the certified San Luis Obispo County LCP as cited in this finding.



## 5. Hazards

### a. Applicable Policies

***Hazards Policy 1: New Development:*** All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. Along the shoreline new development (with the exception of coastal-dependent uses or public recreation facilities) shall be designed so that shoreline protective devices (such as seawalls, cliff retaining walls, revetments, breakwaters, groins) that would substantially alter landforms or natural shoreline processes, will not be needed for the life of the structure. Construction of permanent structures on the beach shall be prohibited except for facilities necessary for public health and safety such as lifeguard towers.

***Hazards Policy 2:*** New development shall ensure structural stability while not creating or contributing to erosion or geological instability.

### b. Consistency with Applicable LCP Policies

San Luis Obispo County LCP Hazards Policy 2 prohibits new development from creating or contributing to erosion or geological instability. The proposed house and barn are located on a coastal marine terrace, and improvements to the access road will require cutting and filling of the hillside, construction of retaining walls, and extensive revegetation; the proposed road route traverses at least two areas subject to landslides.

The County's administrative record for application D980279V/D980010P indicates that the project raises several issues regarding geologic hazards and slope stability. The County approved the project subject to two geologic hazard conditions. The County required the applicant to submit (at the time of construction permit application) an erosion/hillside stabilization plan. In addition, the applicant is required by the County to submit evidence of inspection of improvements by a certified engineering geologist prior to final County inspection. Furthermore, the County concluded that the residential blufftop setback should be at a minimum 100 feet from the edge of the bluff.

There are several alternatives that can be considered to better ensure structural stability and minimize erosion and/or geological instability as a result of the proposed development. Moving the development off of the marine terrace to the inland side of the ridge, along the southern boundary of the site where views from Highway One could be protected, was considered as a potential means to minimize visual impacts, but major geologic constraints were identified. These constraints included the proximity of steep slopes and the thinness of surface soils at this location. The hills below the ridgetop are very steep, averaging 57 degrees in the upper part and nearly vertical in other areas. The thin soils make siting a septic system and other improvements difficult at this location. Thin soils may result in the daylighting of effluent on the hillside from septic systems, leading not only to water quality problems, but also potential surficial slope instability. As a result of these geologic issues, this alternative was rejected as a viable option.





With respect to the marine terrace location, the Applicant is proposing a 70-foot setback for structural development (including pool and lounge structure). LCP hazards provisions require that new development avoid the need for future shoreline armoring. While the analysis of the bluff retreat rates could be improved upon through examination of a time series of aerial photographs, for example, the remote location and lack of reference features make accurate assessment difficult. According to the Commission's geologist, given the relatively large setback proposed and fairly durable nature of the bedrock at the site, the setback distances can be found to be reasonable to ensure that the project won't require shoreline armoring in the future. That said, there is some geologic uncertainty with respect to the project site given the lack of detailed information having been developed. Accordingly, further assurance that no future shoreline protection will be required at this location is needed to meet the requirements of the LCP. Thus, Special Condition 15 prohibits construction of any shoreline protective device(s) for the purpose of protecting the development authorized by this permit.

In terms of the access road, improvements to the road will require a substantial amount of grading. The applicant proposes the use of geogrid to stabilize fill slopes, allowing for steeper slopes and less grading. This will help to mitigate the problem, although high cutslopes will remain. There are also stability concerns as the existing road crosses steep hillsides and at least two areas of ongoing landslide activity. According to the Commission's geologist, better mapping of the landslide areas will be required in order to properly mitigate for the instability they represent. In addition, the Commission's geologist states that no work appears to have been undertaken to properly address road design in the area of the failures, nor have grading plans that allow for an accurate assessment of the quantity of grading involved in the road improvements. Finally, and perhaps the most serious concern regarding the road is that if improperly designed, it could serve to concentrate runoff.

Thus, additional measures must be taken to ensure that the project will not create or contribute to erosion or geological instability. First, drainage from the residential compound must not pond at the blufftop edge or sheet flow over the bluff seaward of the residential development envelope. Drainage devices are not to be located on the bluff edge/face (see Special Condition 5(c)). Second, significant engineering and landform alteration will be necessary to build the road in this area. Special Condition 5 requires submittal of a Drainage Plan for the entire road alignment, for review and approval of the Executive Director prior to issuance of the coastal development permit. Construction is also subject to a Storm Water Pollution Prevention Plan (Special Condition 4). Special Condition 7 requires the Applicant to prepare a geotechnically engineered Final Access Road Plan. The Plan requires the road to follow existing topographical contours and minimize alterations of natural landforms to the greatest degree feasible.

Finally, with respect to the required relocation of the residence to the northern portion of the marine terrace to limit agricultural and public viewshed impacts as much as possible (see preceding agricultural and viewshed findings), the applicant has asserted that the required development envelope established by the Commission's previous 2004 approval would place the development in a geologically unstable location. The applicant's concerns regarding this location are detailed in the correspondence received on July 17, 2007 (attached as Exhibit 7), and include the potential for rock falls and debris flows, as well as the need for extensive grading in order to address steep slopes.



In response to these concerns, the development envelope has been relocated slightly to the south and west (see Exhibit 8). This moves the residence further away from the slopes at the base of the hillside and the area of potential rock and debris flows, but continues to fulfill LCP requirements to protect agricultural lands and visual resources as described by the findings above. Based on the contour maps provided by the applicant, the slopes at this revised location are similar to the slopes within the location proposed by the applicant. In addition, as described by Special Condition 2, the location of the development envelope prescribed by this condition is approximate. Minor modifications to the specific location of the development envelope may be approved by the Executive Director as necessary to resolve any significant hazards that cannot be adequately addressed by incorporating reasonable safety features within the design of the residence (such as devices to catch or divert any remnant risks from rockfalls or debris flows, etc.). In no case can the development envelope be closer than 100 feet from the bluff, which is required by the local approval and retained in this approval.

#### c. Conclusion

As conditioned, the Commission finds that the currently proposed residence and roadway project will ensure structural stability and not create or contribute to erosion or geological instability. As such, and only as conditioned in this approval, the Commission can approve the modified project as consistent with the hazards policies of the certified San Luis Obispo County LCP as cited in this finding.

### 6. Public Access and Recreation

Because the project is located between the first public road (Highway One) and the sea, Section 30604(c) of the Coastal Act requires a specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act.

#### a. Applicable Policies

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

***Section 30210:*** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211:*** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212(a):*** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*



***Section 30221.** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

***Section 30223.** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas, such as the adjacent SeaWest Ranch State Park unit. Section 30240(b) states:

**Section 30240(b).** Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

In addition, the LCP provides:

***LCP Shoreline Access Policy 2:** Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where 1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; 2) adequate public access exists nearby, or; 3) agriculture would be adversely affected....*

#### b. Consistency with Applicable Policies

The County conditioned the coastal development permit to require the applicant to make an offer to dedicate a lateral accessway of twenty-five (25) feet of dry sandy beach along the shore, or from the mean high tide to the toe of the bluff where topography limits the dry sandy beach to less than twenty-five (25) feet. However, given the topography of the area and the location of the mean high tide, the actual area available for public access may be very limited and/or impossible to traverse. Furthermore, the area of dry sandy beach subject to the County's condition may be public land.

Following concerns expressed by the Commission, discussions commenced with the applicant regarding dedication of more meaningful lateral access at the blufftop along the entire length of the property. This is a significant public access offer, and would provide opportunities for future public access in this area. Clearly, this would be viewed as a public access amenity with respect to the proposed development. However, at the time of this writing no voluntary dedications have been made.

Despite LCP and Coastal Act policies that require new development to provide coastal access, precedential court decisions including *Nolan* and *Dolan* require that such conditions be based on the impacts of the project on public access, and be roughly proportional to the extent of such impacts. In this case, the project will result in additional residents that may place increased demands on the coastal access and recreational facilities currently available to the general public in the vicinity of the project. On a cumulative basis, such impacts could be significant enough to warrant the establishment of new coastal trails and access and recreation and amenities. However, at this point, it is difficult to establish



that the provision of a lateral access trail on the subject property is proportional to the extent of the access impacts that may result from the project. As a result, this permit approval does not include any public access requirements.

## 8. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County, acting as the lead CEQA agency, certified a mitigated negative declaration under CEQA when they approved the project on February 24, 2000. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the relevant coastal resource issues posed by the project, and has identified appropriate changes to the project and associated mitigations that are necessary to reduce adverse coastal resource impacts to an insignificant level. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference as if set forth herein in full.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

